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Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23**

**DECLARATION OF ZACHARY G.F.
ABRAHAMSON IN SUPPORT OF
DEFENDANT FACEBOOK, INC.'S
OPPOSITION TO BIRNBAUM & GODKIN,
LLP'S MARCH 22, 2019 MOTION TO SEAL**

Date: July 19, 2019
Time: 2:00 p.m.
Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015

1 I, Zachary G.F. Abrahamson, declare as follows:

2 1. I am a lawyer with the law firm Durie Tangri LLP, counsel of record for Defendant
3 Facebook, Inc. ("Facebook") in the above-captioned matter. I provide this declaration in support of
4 Facebook's Opposition to Birnbaum & Godkin, LLP's March 22, 2019 Motion to Seal. I declare that the
5 following statements are true to the best of my knowledge, information, and belief, formed after a
6 reasonable inquiry under the circumstances. If called upon to testify, I could and would competently
7 testify thereto.

8 2. Attached as **Exhibit 1** hereto is a true and correct copy of the Declaration of [Redacted],
9 Redacted for Public Filing, filed in this matter on March 25, 2019.

10 3. Attached as **Exhibit 2** hereto is a true and correct copy of Case Management Order No.
11 19, issued in this matter on March 1, 2019.

12 4. Attached as **Exhibit 3** hereto is a true and correct copy of the Declaration of David S.
13 Godkin in Response to CMO No. 19, Redacted for Public Filing, filed in this matter on March 18, 2019.

14 5. Attached as **Exhibit 4** hereto is a true and correct copy of the Declaration of David S.
15 Godkin in Support of Response to David S. Godkin, James E. Kruzer and Birnbaum & Godkin, LLP to
16 Defendant's Ex Parte Application for an Order Enforcing the Stipulated Protective Order, filed in this
17 matter on February 28, 2019.

18 6. Attached as **Exhibit 5** hereto is a true and correct copy of Facebook's *Ex Parte*
19 Application for an Order Enforcing the Stipulated Protective Order, filed in this matter on February 25,
20 2019.

21 I declare under penalty of perjury that the foregoing is true and correct. Executed this 8th day of
22 July, 2019, in San Francisco, California.

23
24
25 
26 ZACHARY G. F. ABRAHAMSON

1 **PROOF OF SERVICE**

2 I am employed in San Francisco County, State of California, in the office of a member of the bar
3 of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a
4 party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

5 On July 8, 2019, I served the following documents in the manner described below:

6 **DECLARATION OF ZACHARY G.F. ABRAHAMSON IN SUPPORT OF**
7 **DEFENDANT FACEBOOK, INC.'S OPPOSITION TO BIRNBAUM & GODKIN,**
8 **LLP'S MARCH 22, 2019 MOTION TO SEAL**

- 9 ☒ (BY OVERNIGHT MAIL) I am personally and readily familiar with the business
10 practice of Durie Tangri LLP for collection and processing of correspondence for overnight
11 delivery, and I caused such document(s) described herein to be deposited for delivery to a
12 facility regularly maintained by Federal Express for overnight delivery.
- 13 ☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through
14 Durie Tangri's electronic mail system from cortega@durietangri.com to the email
15 addresses

16 On the following part(ies) in this action:

17 **VIA OVERNIGHT MAIL & EMAIL**

18 Reno F.R. Fernandez III
19 Matthew J. Olson
20 Macdonald Fernandez LLP
21 221 Sansome Street, Third Floor
22 San Francisco, CA 94104
23 Reno@MacFern.com
24 Matt@MacFern.com

25 *Attorneys for Plaintiff Six4Three, LLC*

26 **VIA EMAIL ONLY**

27 Stuart G. Gross
28 GROSS & KLEIN LLP
The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111
sgross@grosskleinlaw.com

VIA EMAIL ONLY

David S. Godkin
James Kruzer
BIRNBAUM & GODKIN, LLP
280 Summer Street
Boston, MA 02210
godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

VIA EMAIL ONLY

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ecf@computerlaw.com

*Attorney for Theodore Kramer and Thomas
Scaramellino (individual capacities)*

VIA EMAIL ONLY

James A. Murphy
James A. Lassart
Thomas P Mazzucco
Joseph Leveroni
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TMazzucco@MPBF.com
JLeveroni@MPBF.com

Attorney for Birnbaum & Godkin, LLP

1 **VIA EMAIL ONLY**

2 Donald P. Sullivan
3 Wilson Elser
4 525 Market Street, 17th Floor
5 San Francisco, CA 94105
6 donald.sullivan@wilsonelser.com
7 Joyce.Vialpando@wilsonelser.com
8 Dea.Palumbo@wilsonelser.com

9 *Attorney for Gross & Klein LLP*

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct. Executed on July 8, 2019, at San Francisco, California.
12

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15
16
17
18
19
20
21
22
23
24
25
26
27
28



Christina Ortega

EXHIBIT 1

D-23

1 James A. Murphy – 062223
JMurphy@mpbf.com
2 James A. Lassart – 40913
JLassart@mpbf.com
3 Joseph S. Leveroni – 304721
JLeveroni@mpbf.com
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5 San Francisco, CA 94108-5530
Telephone: (415) 788-1900
6 Facsimile: (415) 393-8087

7 Attorneys for Plaintiff's Counsel
David S. Godkin (admitted *pro hac vice*)
8 James E. Kruzer (admitted *pro hac vice*)
Birnbaum & Godkin, LLP
9 280 Summer Street
Boston, MA 02210
10 Telephone: (617) 307-6100
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11 godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com
12

FILED
SAN MATEO COUNTY
MAR 25 2019

Clerk of the Superior Court

By  ~~CLERK~~

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
16 liability company;

17 Plaintiff,

18 v.

19 FACEBOOK, INC., a Delaware
corporation;
20 MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
21 JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
22 MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
23 DOES 1 through 50, inclusive,

24 Defendants.

Case No. CIV 533328

Assigned For All Purposes To
Hon. V. Raymond Swope, Department 23

25 **DECLARATION OF** Redacted

Redacted

26 **REDACTED FOR PUBLIC FILING**

Hearing: 5/13/19

Time 9:00 am

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

27 Trial Date: April 25, 2019

CIV533328
DECL
Declaration
1727606



28
FAXED

1 I, [Redacted], declare:

2 1. I am over the age of 18. I make the following statements in response to Case Management
3 Order No. 19, ¶3. I make this Declaration from personal knowledge, and if called to testify, I could and
4 would competently testify thereto.

5 2. I received a copy of the Stipulated Protective Order and blank certification in this action
6 on May 10, 2018.

7 3. I executed the certification on May 14, 2018.

8 4. As detailed below, I have deleted most documents. I understand from the Plaintiff's that
9 they sent me Facebook's confidential and highly confidential information on May 14, 2018, May 16,
10 2018, June 6, 2018, and June 27, 2018. I take this information from the draft declaration prepared by Mr
11 Godkin.

12 5. As used herein, "Facebook's confidential or highly confidential information" includes all
13 information copied or extracted from or reflecting the confidential or highly confidential information,
14 all copies, excerpts, summaries or compilations of confidential or highly confidential information, and
15 any testimony, conversations or presentations by parties or their counsel that might reveal confidential
16 or highly confidential information. I stored and maintained Facebook's confidential and highly
17 confidential information in a secure location to which only I had access.

18 6. I destroyed all Facebook confidential and highly confidential information in my custody
19 or control between January 4, 2019 and January 11, 2019.

20 7. Case Management Order 19 requires me to confirm my "compliance with the Stipulated
21 Protective Order by "not reveal[ing] or discus[ing] confidential information to or with any person who
22 is not entitled to receive such information"." I have sought to make my position on this matter clear in
23 recent correspondence with the parties to these proceedings and the court. I exhibit a copy of that entire
24 chain of correspondence.

25 8. Given the widespread public scrutiny of this case and the potential criminality of
26 breaching the Protective Order I want to be clear as to what I did and did not do, rather than asserting
27 that I have complied without a deeper examination of my involvement in the case. It is a difficult,
28

1 complex and costly task to establish the extent of my compliance. I consider that such an undertaking
2 would be unfair and prejudicial to me, for the reasons detailed in my correspondence. In summary:

- 3 a. **Firstly**, there is no evidence that I have not complied with the order. At its highest, the
4 evidence is based on the actions of third parties and an email in which I said I was able
5 to join a call. My records confirm that I did not join that call and I cannot be held liable
6 for what others say about me. There is simply no evidence that I have breached the
7 Protective Order, or even that I intended to do so.
- 8 b. **Secondly**, I am still not clear why Facebook consider that I have not complied with the
9 order. The *ex parte* application by Facebook was misleading and inaccurate. There was
10 no need for an application to be made on this basis. The correspondence I have had with
11 Facebook since only serves to confirm that there is in fact no evidence to suggest that I
12 have breached the terms of the order yet I find myself having to undertake considerable
13 effort at considerable cost to comply with an order that was procured on a material
14 misrepresentation.
- 15 c. **Thirdly**, throughout my involvement in this matter, as an independent expert retained by
16 the Plaintiffs, I have followed the instructions and advice of those that retained me. I
17 always operated under the assumption that the parties would act with respect to the
18 Protective Order. I did not therefore give a detailed analysis to the terms of the Protective
19 Order, as I had no reason to believe that the terms would be breached. I now realize that
20 the terms of the Protective Order are complex and require detailed analysis. In order for
21 me to fully explain what I have or have not done, I will need further legal advice and a
22 deep consideration of all documents and communications. For reasons detailed below,
23 this may not be entirely possible. However, whatever I do will be very costly to me and
24 time consuming. Given this prejudice, I do not think it is fair for me to have to go through
25 such an undertaking. For reasons dealt with below, I also think that such an undertaking
26 would not be necessary.

d. **Fourthly**, I no longer have the relevant information to be able to provide a complete picture, as I have destroyed the material. As I confirmed to Mr. Godkin and as per his request, I destroyed Facebook's confidential and highly confidential information by January 11, 2019. I no longer have access to that Facebook confidential or highly confidential information. This makes a historical analysis of compliance very difficult, leaving aside whether I even have all the correspondence.

9. For the avoidance of doubt and to assist the court, I want to make it clear that the issues in concern in Facebook's *ex parte* application had nothing to do with me. I was not a party to the events that led to the DCMS Committee's receipt of Facebook's confidential and highly confidential information. Whilst I have given evidence to the DCMS Committee on matters to which I have expertise, I was simply not involved with the passing of information from the Plaintiffs – or anyone else – to the DCMS Committee. There is no evidence that I was so involved and I would not have involved myself in this breach of the Protective Order.

10. Furthermore, there was an accusation that because a third party, a **Redacted**, had tagged me in a Twitter post, I had somehow been involved with him receiving and disseminating Facebook's confidential or highly confidential information. I understand this accusation has now been conceded by Facebook as being without merit. However, for clarity and for the court record, I confirm that I had no involvement with **Redacted** and do not know why he tagged me on Twitter. I can only presume he did so because of my general expertise but cannot say for certain. In any event, I did not provide any information to him at all, have not discussed the documents with him and I cannot be held responsible for the actions of a third party.

11. As the purpose of the *ex parte* application and Case Management Order No. 19 is fulfilled, as far as these issues are in my knowledge and control, by paragraphs 9 and 10 of this declaration, I cannot see the necessity for any further declaration from me.

12. I also feel like this whole process has been deeply unfair to me. I received no independent legal advice on the terms of the Protective Order at the outset, which I now realize was a mistake. There is however no evidence that I have breached the Protective Order. Nevertheless, I was been subject to

1 an *ex parte* application by Facebook, which was both unnecessarily *ex parte* and misleading. I have
2 thereafter incurred costs trying to explain my position. I have incurred further costs since. This has all
3 come from my own funds.

4 13. If I were forced to provide a full explanation of my compliance with the Protective Order,
5 this would incur considerable costs, time and resources. Given the lack of evidence of any breach of the
6 Protective Order, the misleading nature of the accusations against me in Facebook's *ex parte* application
7 and that I can positively say that I was not involved with the breaches of concern, such a further
8 declaration would seem unfair and unnecessary. I would instead hope that the Honorable Judge Swope
9 and the Court would rather give deference to the problems I have faced and release me from any further
10 action.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct.

13 Executed March 20, 2019

14
15 **Redacted**

16
17 **Redacted**

EXHIBIT



Sonal N. Mehta

Durie Tangri

By email: smehta@durietangri.com

05 March 2019

Our ref: RAN/32411

Dear Ms Mehta

Redacted

We have been instructed to represent the above named.

Our client has received correspondence from David Godkin of Birnbaum & Godkin, LLP relating to *Six4Three v Facebook Inc. et al.*

On 1 March 2019, Mr Godkin provided Redacted with an order from the Superior Court of California explaining that our client was required to provide a declaration to the court by 17:00 Eastern Time on 5 March 2019. Mr Godkin did not provide the background documents to that order until 20:00 GMT on 4 March 2019, after a request for those documents from this firm.

Having considered those documents, we are instructed to write to you to provide some clarity to our client's role in the *Six4Three* litigation as there appears to be a misunderstanding of his role and his retainer. You will appreciate that our client has been cut out from the process to date, which has prejudiced his ability to explain his role and the basis for his limited involvement in the case.

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London, EC3R 5AQ

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DX: 307450 Cheapside
enquiries@itnsolicitors.com
www.itnsolicitors.com

1. Our client's background

Redacted is a well-known privacy and data rights activist. He is renowned for his insight into the European data protection regime, as well as his capacity to convey such subjects to a wider audience.

He has been regularly sought for commentary and insight in the media in this role. Redacted

Redacted. We enclose examples of that commentary for your client's consideration, which demonstrate Redacted unique ability to humanise complex technical issues and to explain the importance of the data protection regime as a matter of wider public interest.

2. Our client's role with *Six4Three*

In the context of that expertise, our client was approached by Mr Godkin to act as an expert on public interest elements of the *Six4Three* litigation. Redacted was provided with a letter of engagement on 14 May 2018. We enclose a copy of that engagement letter.

You will see that the terms of the retainer were not well drafted but that Redacted was retained by Birnbaum & Godkin, LLP to "assist [them] in reviewing Facebook's arguments related to digital privacy issues." This is what our client understood his role to be and acted at the instruction of Birnbaum & Godkin, LLP and their clients in this litigation. Redacted has not been paid for these services.

To be clear, Redacted is not a lawyer and was therefore reliant on Birnbaum & Godkin, LLP to understand the US process and the terms of the Protective Order.

3. Execution of the Protective Order

Redacted was provided with the Protective Order by Birnbaum & Godkin, LLP on 10 May 2018. The certificate was executed on 14 May 2018. We enclose the certified version.

Klein & Gross LLP were appointed as Redacted agent for service of process, on the recommendation of Birnbaum & Godkin, LLP. Redacted was not provided with any independent legal advice on the terms of the order at the time it was provided to him nor when it was executed.

4. Current status of documents

On 4 January 2019, Mr Godkin requested Redacted to destroy all confidential and highly confidential documents. Mr Godkin requested Redacted to do so, as Birnbaum & Godkin, LLP were no longer able to act for the Plaintiff.

Redacted destroyed all Facebook confidential and highly confidential information in his custody or control between 4 January 2019 and 11 January 2019.

Redacted maintained a contemporaneous record of the documents he had received, as and when he received them. Accordingly, he is able to confirm that he has deleted all the documents he had received marked "Confidential" or "Highly Confidential" under the Protective Order. These are the documents listed in Annex 1. He also received internal case summaries prepared by the Plaintiffs and has permanently deleted those documents as well.

5. Further matters

Our client is concerned by the nature of the allegations levied at him. Being kept from these proceedings has prejudiced his position by preventing him from being able to explain his limited role. For instance, page 7 line 8 of Facebook's *ex parte* application of 25 February 2019 suggests that Redacted agreed to "confirm details of the confidential

information" to reporters "anonymously." Redacted denies having said the same and has not been provided with the document referred to. He is unaware of any such email and should it exist, please provide it to Redacted through this firm.

We trust that the information provided with this letter and enclosures clarifies the position for Facebook and quells any further concerns your client may have. We should be grateful if you could provide a copy of this letter to the court and the Honorable Judge V. Raymond Swope accordingly.

Should you have any queries in respect of this matter please contact Mr Ravi Naik of our offices.

Yours faithfully

Irvine Thanvi Natas Solicitors

cc. David Godkin, Birnbaum & Godkin, LLP

Annex 1: Documents deleted

- [illegible]

- Redacted
- Redacted
- Redacted
- Redacted
- Redacted
- Redacted
- Redacted
- Redacted
- Redacted
- Redacted



BIRNBAUM &
GODKIN, LLP
ATTORNEYS AT LAW

David S. Godkin
Direct Dial: (617) 307-6110
godkin@birnbaumgodkin.com

May 14, 2018

BY EMAIL ONLY [Redacted]

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Re: Six4Three, LLC v. Facebook, Inc., Civ. 533328

Dear [Redacted]

I am writing to confirm that Birnbaum & Godkin, LLP, as counsel for Six4Three, LLC, is engaging you as an expert consultant in the above-referenced matter to assist us in reviewing Facebook's arguments related to digital privacy issues. The initial phase of this engagement will involve your review of a brief and declaration that we have prepared in opposition to a motion to strike filed by Facebook, both of which include citations to various documents produced by Facebook in the above litigation. In addition, we will provide you with such of the Facebook documents that you request. You have agreed that you will not charge for this phase of the engagement. We will discuss compensation for later phases of the engagement, including possible testimony, and related compensation for your time, at a later date.

You agree that you will maintain in the strictest of confidence all aspects of this engagement including, but not limited to, all materials reviewed, generated or received by you or sent by you to this firm or our client. You will refrain from speaking with anyone about this matter and you will treat all communications with my client and my firm as privileged. Finally, you agree that any materials provided to you and any report that you prepare at our request shall be the property of the attorneys who have retained you and will not be used or disclosed without our consent.

I understand that you have already reviewed the Protective Order entered by the Court on October 24, 2016 and that you will sign the certification to same before we provide you with any documents. The brief and declaration that we will provide to you reference information that has been designated by Facebook as Confidential or Highly Confidential and are subject to the Protective Order. The Facebook documents that you request have also been designated by Facebook as Confidential or Highly Confidential and are subject to the Protective Order.

If this letter accurately describes our agreement, please sign the letter in the space provided and return it to me.



Redacted

May 14, 2018

Page Two

I look forward to working with you.

Very truly yours,

David S. Godkin

DSG/cam

AGREED AND ACCEPTED:

Redacted

Redacted

Date:

Redacted



Redacted



Redacted



Redacted



Redacted



Redacted



Redacted



Redacted



Redacted

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9 Attorneys for Defendant
Facebook, Inc.

FILED
SAN MATEO COUNTY

OCT 25 2016

Clerk of the Superior Court

By

DEPUTY CLERK

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN MATEO**

14 SIX4THREE, LLC, a Delaware limited
liability company,

15 Plaintiff,

16 v.

17 FACEBOOK, INC., a Delaware
18 corporation and DOES 1-50, inclusive,

19 Defendant.

Case No. CIV533328

**STIPULATED [PROPOSED]
PROTECTIVE ORDER**

21 In order to protect confidential information obtained by the parties in connection with this
22 case, the parties, by and through their respective undersigned counsel and subject to the approval
23 of the Court, hereby agree as follows:

24 **Part One: Use Of Confidential Materials In Discovery**

25 1. Any party or non-party may designate as Confidential Information (by stamping
26 the relevant page or as otherwise set forth herein) any document or response to discovery which
27 that party or non-party considers in good faith to contain information involving trade secrets, or

28 CIV533328
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Order
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-1-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328



1 confidential business, financial, or personal information, including personal financial information
2 about any individual or entity; information regarding any individual's or entity's banking
3 relationship with any banking institution, including information regarding financial transactions
4 or financial accounts, and any information regarding any individual or entity that is not otherwise
5 available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and
6 8.490 of the California Rules of Court or under other provisions of California law. Any party or
7 non-party may designate as Highly Confidential Information (by stamping the relevant page or as
8 otherwise set forth herein) any document or response to discovery which that party or non-party
9 considers in good faith to contain information involving highly sensitive trade secrets or
10 confidential business, financial, or personal information, the disclosure of which would result in
11 the disclosure of trade secrets or other highly sensitive research, development, production,
12 personnel, commercial, market, financial, or business information, or highly sensitive personal
13 information, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, 8.160, and 8.490 of the
14 California Rules of Court or under other provisions of California law. Where a document or
15 response consists of more than one page, the first page and each page on which confidential
16 information appears shall be so designated.

17 2. A party or non-party may designate information disclosed during a deposition or in
18 response to written discovery as Confidential Information or Highly Confidential Information by
19 so indicating in said responses or on the record at the deposition and requesting the preparation of
20 a separate transcript of such material. In addition, a party or non-party may designate in writing,
21 within thirty (30) days after receipt of said responses or of the deposition transcript for which the
22 designation is proposed, that specific pages of the transcript and/or specific responses be treated
23 as Confidential Information or Highly Confidential Information. Any other party may object to
24 such proposal, in writing or on the record. Upon such objection, the parties shall follow the
25 procedures described in Paragraph 9 below. Until the thirty (30) day period for designation has
26 lapsed, the entirety of each deposition transcript shall be treated as Confidential Information.
27 After the thirty (30) day period for designation has lapsed, any documents or information
28 designated pursuant to the procedure set forth in this paragraph shall be treated according to the

1 designation until the matter is resolved according to the procedures described in Paragraph 9
2 below, and counsel for all parties shall be responsible for marking all previously unmarked copies
3 of the designated material in their possession or control with the specified designation. A party
4 that makes original documents or materials available for inspection need not designate them as
5 Confidential Information or Highly Confidential Information until after the inspecting party has
6 indicated which materials it would like copied and produced. During the inspection and before the
7 designation and copying, all of the material made available for inspection shall be considered
8 Highly Confidential Information.

9 3. All Confidential Information or Highly Confidential Information produced or
10 exchanged in the course of this case (not including information that is publicly available) shall be
11 used by the party or parties to whom the information is produced solely for the purpose of this
12 case. Confidential Information or Highly Confidential Information shall not be used for any
13 commercial competitive, personal, or other purpose. Confidential Information or Highly
14 Confidential Information must be stored and maintained by a receiving party at a location and in a
15 secure manner that ensures that access is limited to the persons authorized under this Stipulated
16 Protective Order. The protections conferred by this Stipulated Protective Order cover not only
17 the Confidential Information or Highly Confidential Information produced or exchanged in this
18 case, but also (1) any information copied or extracted from or reflecting the Confidential
19 Information or Highly Confidential Information; (2) all copies, excerpts, summaries, or
20 compilations of Confidential Information or Highly Confidential Information; and (3) any
21 testimony, conversations, or presentations by parties or their counsel that might reveal
22 Confidential Information or Highly Confidential Information. However, the protections
23 conferred by this Stipulated Protective Order do not cover the following information: (a) any
24 information that is in the public domain at the time of disclosure to a receiving party or becomes
25 part of the public domain after its disclosure to a receiving party as a result of publication not
26 involving a violation of this Stipulated Protective Order, including becoming part of the public
27 record through trial or otherwise; and (b) any information known to the receiving party prior to
28

1 the disclosure or obtained by the receiving party after the disclosure from a source who obtained
2 the information lawfully and under no obligation of confidentiality to the designating party.

3 4. Except with the prior written consent of the other parties, or upon prior order of
4 this Court obtained upon notice to opposing counsel, Confidential Information shall not be
5 disclosed to any person other than:

6 (a) counsel for the respective parties to this litigation, including in-house
7 counsel and co-counsel retained for this litigation;

8 (b) employees of such counsel;

9 (c) individual parties or officers or employees of a party, to the extent deemed
10 necessary by counsel for the prosecution or defense of this litigation;

11 (d) consultants or expert witnesses retained for the prosecution or defense of
12 this litigation, provided that each such person shall execute a copy of the
13 Certification annexed to this Order (which shall be retained by counsel to
14 the party so disclosing the Confidential Information and made available
15 for inspection by opposing counsel during the pendency or after the
16 termination of the action only upon good cause shown and upon order of
17 the Court) before being shown or given any Confidential Information, and
18 provided that if the party chooses a consultant or expert employed by the
19 opposing party or one of its competitors, the party shall notify the
20 opposing party, or designating non-party, before disclosing any
21 Confidential Information to that individual and shall give the opposing
22 party an opportunity to move for a protective order preventing or limiting
23 such disclosure;

24 (e) any authors or recipients of the Confidential Information or a custodian;

25 (f) the Court, court personnel, and court reporters; and

26 (g) witnesses (other than persons described in Paragraph 4(e)). A witness shall
27 sign the Certification before being shown a confidential document.

28 Confidential Information may be disclosed to a witness who will not sign

1 the Certification only in a deposition at which the party who designated
2 the Confidential Information is represented or has been given notice that
3 Confidential Information produced by the party may be used. At the
4 request of any party, the portion of the deposition transcript involving the
5 Confidential Information shall be designated "Confidential" pursuant to
6 Paragraph 2 above. Witnesses shown Confidential Information shall not be
7 allowed to retain copies.

8 5. Except with the prior written consent of the other parties, or upon prior order of
9 this Court obtained after notice to opposing counsel, Highly Confidential Information shall be
10 treated in the same manner as Confidential Information pursuant to Paragraph 4 above, except
11 that it shall not be disclosed to individual parties or directors, officers or employees of a party, or
12 to witnesses (other than persons described in Paragraph 4(a) or 4(e)).

13 6. Any persons receiving Confidential Information or Highly Confidential
14 Information shall not reveal or discuss such information to or with any person who is not entitled
15 to receive such information, except as set forth herein. If a party or any of its representatives,
16 including counsel, inadvertently discloses any Confidential Information or Highly Confidential
17 Information to persons who are not authorized to use or possess such material, the party shall
18 provide immediate written notice of the disclosure to the party whose material was inadvertently
19 disclosed. If a party has actual knowledge that Confidential Information or Highly Confidential
20 Information is being used or possessed by a person not authorized to use or possess that material,
21 regardless of how the material was disclosed or obtained by such person, the party shall provide
22 immediate written notice of the unauthorized use or possession to the party whose material is
23 being used or possessed. No party shall have an affirmative obligation to inform itself regarding
24 such possible use or possession.

25 7. In connection with discovery proceedings as to which a party submits Confidential
26 Information or Highly Confidential Information, all documents and chamber copies containing
27 Confidential Information or Highly Confidential Information which are submitted to the Court
28 shall be filed with the Court in sealed envelopes or other appropriate sealed containers. On the

1 outside of the envelopes, a copy of the first page of the document shall be attached. If
2 Confidential Information or Highly Confidential Information is included in the first page attached
3 to the outside of the envelopes, it may be deleted from the outside copy. The word
4 "CONFIDENTIAL" shall be stamped on the envelope and a statement substantially in the
5 following form shall also be printed on the envelope:

6 "This envelope is sealed pursuant to Order of the Court, contains Confidential
7 Information and is not to be opened or the contents revealed, except by Order of the
8 Court or agreement by the parties."

9 8. A party may designate as Confidential Information or Highly Confidential
10 Information documents or discovery materials produced by a non-party by providing written
11 notice to all parties of the relevant document numbers or other identification within thirty (30)
12 days after receiving such documents or discovery materials. Until the thirty (30) day period for
13 designation has lapsed, any documents or discovery materials produced by a non-party shall be
14 treated as Confidential Information. Any party or non-party may voluntarily disclose to others
15 without restriction any information designated by that party or nonparty as Confidential
16 Information or Highly Confidential Information, although a document may lose its confidential
17 status if it is made public. If a party produces materials designated Confidential Information or
18 Highly Confidential Information in compliance with this Order, that production shall be deemed
19 to have been made consistent with any confidentiality or privacy requirements mandated by local,
20 state or federal laws.

21 9. If a party contends that any material is not entitled to confidential treatment, such
22 party may at any time give written notice to the party or non-party who designated the material.
23 The party or non-party who designated the material shall have twenty (20) days from the receipt
24 of such written notice to apply to the Court for an order designating the material as confidential.
25 The party or non-party seeking the order has the burden of establishing that the document is
26 entitled to protection.
27
28

1 10. Notwithstanding any challenge to the designation of material as Confidential
2 Information or Highly Confidential Information, all documents shall be treated as such and shall
3 be subject to the provisions hereof unless and until one of the following occurs:

4 (a) the party or non-party who claims that the material is Confidential
5 Information or Highly Confidential Information withdraws such
6 designation in writing; or

7 (b) the party or non-party who claims that the material is Confidential
8 Information or Highly Confidential Information fails to apply to the Court
9 for an order designating the material confidential within the time period
10 specified above after receipt of a written challenge to such designation; or

11 (c) the Court rules the material is not Confidential Information or Highly
12 Confidential Information.

13 11. All provisions of this Order restricting the communication or use of Confidential
14 Information or Highly Confidential Information shall continue to be binding after the conclusion
15 of this action, unless otherwise agreed or ordered. Upon conclusion of the litigation, a party in the
16 possession of Confidential Information or Highly Confidential Information shall within sixty (60)
17 days either (a) return such documents to counsel for the party or non-party who provided such
18 information, or (b) destroy such documents. Whether the Confidential Information or Highly
19 Confidential Information is returned or destroyed, the receiving party must submit a written
20 certification to the producing party (and, if not the same person or entity, to the designating party)
21 by the 60 day deadline that (1) all the Confidential Information or Highly Confidential
22 Information that was returned or destroyed, and (2) affirms that the receiving party has not
23 retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Confidential Information or Highly Confidential Information.

25 Notwithstanding this provision, counsel are entitled to retain an archival copy of all pleadings,
26 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
27 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
28 work product, even if such materials contain Confidential Information or Highly Confidential

1 Information. Any such archival copies that contain or constitute Confidential Information or
2 Highly Confidential Information remain subject to this Stipulated Protective Order. The
3 conclusion of the litigation shall be deemed to be the later of (1) dismissal of all claims and
4 defenses in this action, with or without prejudice; and (2) final judgment herein after the
5 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
6 including the time limits for filing any motions or applications for extension of time pursuant to
7 applicable law. After the conclusion of this action, this Court will retain jurisdiction to enforce
8 the terms of this Order.

9 12. Nothing herein shall be deemed to waive any applicable privilege or work product
10 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
11 protected by privilege or work product protection. Any witness or other person, firm or entity
12 from which discovery is sought may be informed of and may obtain the protection of this Order
13 by written advice to the parties' respective counsel or by oral advice at the time of any deposition
14 or similar proceeding.

15 13. In the event that any Confidential Information or Highly Confidential Information
16 is inadvertently produced without such designation, the party or non-party that inadvertently
17 produced the information without designation shall give written notice of such inadvertent
18 production promptly after the party or non-party discovers the inadvertent failure to designate
19 (but no later than fourteen (14) calendar days after the party or non-party discovers the
20 inadvertent failure to designate), together with a further copy of the subject information
21 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" (the "Inadvertent Production
22 Notice"). Upon receipt of such Inadvertent Production Notice, the party that received the
23 information that was inadvertently produced without designation shall promptly destroy the
24 inadvertently produced information and all copies thereof, or, at the expense of the producing
25 party or non-party, return such together with all copies of such information to counsel for the
26 producing party and shall retain only the newly-produced versions of that information that are
27 designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." This provision is not
28 intended to apply to any inadvertent production of any information or materials protected by

1 attorney-client or work product privileges, which inadvertent production is governed by Section
2 14 below.

3 14. In the event that any party or non-party inadvertently produces information that is
4 privileged or otherwise protected from disclosure during the discovery process ("Inadvertent
5 Production Material"), the following shall apply:

6 (a) Such inadvertent production or disclosure shall in no way prejudice or
7 otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, attorney
8 work product protection, or other applicable protection in this case or any other federal or state
9 proceeding, provided that the producing party shall notify the receiving party in writing of such
10 protection or privilege promptly after the producing party discovers such materials have been
11 inadvertently produced.

12 (b) If a claim of inadvertent production is made, pursuant to this Stipulated
13 Protective Order, with respect to discovery material then in the custody of another party, that
14 party shall: (i) refrain from any further examination or disclosure of the claimed Inadvertent
15 Production Material; (ii) promptly make a good-faith effort to return the claimed Inadvertent
16 Production Material and all copies thereof (including summaries and excerpts) to counsel for the
17 producing party, or destroy all such claimed Inadvertent Production Material (including
18 summaries and excerpts) and certify in writing to that fact; and (iii) not disclose or use the
19 claimed Inadvertent Production Material for any purpose until further order of the Court expressly
20 authorizing such use.

21 (c) A party may move the Court for an order compelling production of the
22 Inadvertent Production Material on the ground that it is not, in fact, privileged or protected. The
23 motion shall be filed under seal and shall not assert as a ground for entering such an order the fact
24 or circumstance of the inadvertent production. The producing party retains the burden of
25 establishing the privileged or protected nature of any inadvertently disclosed or produced
26 information. While such a motion is pending, the Inadvertent Production Material at issue shall
27 be treated in accordance with Paragraph 14(b) above.

1 (d) If a party, in reviewing discovery material it has received from any other
2 party or any non-party, finds anything the reviewing party believes in good faith may be
3 Inadvertent Production Material, the reviewing party shall: (i) refrain from any further
4 examination or disclosure of the potentially Inadvertent Production Material; (ii) promptly
5 identify the material in question to the producing party (by document number or other equally
6 precise description); and (iii) give the producing party seven (7) days to respond as to whether the
7 producing party will make a claim of inadvertent production. If the producing party makes such a
8 claim, the provisions of Paragraphs 14(a)-(c) above shall apply.

9 15. The parties agree that should the production of source code become necessary,
10 they will need to amend or supplement the terms of this Order. To the extent production of
11 source code becomes necessary in this case, the parties will work expeditiously to propose
12 amendments to this Order to cover any production of source code.

13 16. If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any Confidential Information or Highly Confidential Information, the
15 receiving party must:

16 (a) promptly notify in writing the designating party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the subpoena or order is
20 subject to this Stipulated Protective Order. Such notification shall include a copy of this
21 Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by
23 the designating party whose Confidential Information or Highly Confidential Information may be
24 affected.

25 If the designating party timely seeks a protective order, the party served with the subpoena
26 or court order shall not produce any Confidential Information or Highly Confidential Information
27 before a determination by the court from which the subpoena or order issued, unless the party has
28 obtained the designating party's permission. The designating party shall bear the burden and

1 expense of seeking protection in that court of its confidential material—and nothing in these
2 provisions should be construed as authorizing or encouraging a receiving party in this action to
3 disobey a lawful directive from another court.

4 17. The following additional terms apply to non-party discovery material:

5 (a) The terms of this Order are applicable to information produced by a non-
6 party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”
7 Such information produced by non-parties in connection with this litigation is protected by the
8 remedies and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a non-party from seeking additional protections.

10 (b) In the event that a party is required, by a valid discovery request, to
11 produce a non-party’s confidential information in its possession, and the party is subject to an
12 agreement with the non-party not to produce the non-party’s confidential information, then the
13 party shall:

14 i. promptly notify in writing the requesting party and the non-party
15 that some or all of the information requested is subject to a confidentiality agreement with a non-
16 party;

17 ii. promptly provide the non-party with a copy of the Stipulated
18 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
19 description of the information requested; and

20 iii. make the information requested available for inspection by the non-
21 party.

22 (c) If the non-party fails to object or seek a protective order from this Court
23 within 28 days of receiving the notice and accompanying information, the receiving party may
24 produce the non-party’s confidential information responsive to the discovery request. If the non-
25 party timely seeks a protective order, the receiving party shall not produce any information in its
26 possession or control that is subject to the confidentiality agreement with the non-party before a
27 determination by the Court. Absent a court order to the contrary, the non-party shall bear the
28

1 burden and expense of seeking protection in this Court of its Confidential Information or Highly
2 Confidential Information.

3 18. Nothing in this Stipulated Protective Order shall be construed to preclude any
4 party from asserting in good faith that certain Confidential Information or Highly Confidential
5 Information requires additional protections. The parties shall meet and confer to agree upon the
6 terms of such additional protection. By stipulating to the entry of this Protective Order no party
7 waives any right it otherwise would have to object to disclosing or producing any information or
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no party waives
9 any right to object on any ground to use in evidence of any of the material covered by this
10 Stipulated Protective Order. Nothing in this Stipulated Protective Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 **Part Two: Use of Confidential Materials in Court**

13 The following provisions govern the treatment of Confidential Information or Highly
14 Confidential Information used at trial or submitted as a basis for adjudication of matters other
15 than discovery motions or proceedings. These provisions are subject to Rules 2.550, 2.551, 2.580,
16 2.585, 8.160, and 8.490 of the California Rules of Court and must be construed in light of those
17 Rules.

18 19. A party that files with the Court, or seeks to use at trial, materials designated as
19 Confidential Information or Highly Confidential Information, and who seeks to have the record
20 containing such information sealed, shall submit to the Court a motion or an application to seal,
21 pursuant to California Rule of Court 2.551.

22 20. A party that files with the Court, or seeks to use at trial, materials designated as
23 Confidential Information or Highly Confidential Information by anyone other than itself, and who
24 does not seek to have the record containing such information sealed, shall comply with either of
25 the following requirements:

- 26 (a) At least ten (10) business days prior to the filing or use of the Confidential
27 Information or Highly Confidential Information, the submitting party shall
28 give notice to all other parties, and to any non-party that designated the

1 materials as Confidential Information or Highly Confidential Information
2 pursuant to this Order, of the submitting party's intention to file or use the
3 Confidential Information or Highly Confidential Information, including
4 specific identification of the Confidential Information or Highly
5 Confidential Information. Any affected party or non-party may then file a
6 motion to seal, pursuant to California Rule of Court 2.551(b); or

7 (b) At the time of filing or desiring to use the Confidential Information or
8 Highly Confidential Information, the submitting party shall submit the
9 materials pursuant to the lodging-under-seal provision of California Rule of
10 Court 2.551(d). Any affected party or non-party may then file a motion to
11 seal, pursuant to the California Rule of Court 2.551(b), within ten (10)
12 business days after such lodging. Documents lodged pursuant to California
13 Rule of Court 2.551(d) shall bear a legend stating that such materials shall
14 be unsealed upon expiration of ten (10) business days, absent the filing of a
15 motion to seal pursuant to Rule 2.551(b) or Court order.

16 21. In connection with a request to have materials sealed pursuant to Paragraph 12 or
17 Paragraph 13, the requesting party's declaration pursuant to California Rule of Court 2.551(b)(1)
18 shall contain sufficient particularity with respect to the particular Confidential Information or
19 Highly Confidential Information and the basis for sealing to enable the Court to make the findings
20 required by California Rule of Court 2.550(d).

21 **IT IS SO STIPULATED.**

22
23 DATED: _____, 2016

24 **PERKINS COIE LLP**

25 By: _____

26 Julie E. Schwartz

27 *Attorneys for Defendant*
28 *Facebook, Inc.*

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DATED: _____, 2016


BIRNBAUM & GODKIN, LLP

By: _____
David Godkin

Attorneys for Plaintiff
SIX4THREE, LLC

IT IS SO ORDERED.

DATED: 10/24, 2016



JUDGE OF THE SUPERIOR COURT

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on _____, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ located at the address of _____ as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this ____ day of _____, 2016, at Redacted.

Redacted

By: _____

Address: _____

Phone: _____

Redacted

DurieTangri

Sonal N. Mehta
415-376-6427 (direct)
415-362-6666 (main)
smehta@durietangri.com

March 6, 2019

VIA EMAIL

Ravi Naik
Irvine Thanvi Natas Solicitors
19 - 21 Great Tower Street
Tower Hill
London, EC3R 5AQ
rnaik@itnsolicitors.com

Re: **Redacted**

Dear Mr. Naik,

We are in receipt of your correspondence dated March 5, 2019. As you know, we represent Facebook in *Six4Three, LLC v. Facebook Inc., et al.*, Case No. CIV533328, which is currently pending in San Mateo Superior Court, in California. As you know, the case has been the subject of significant international attention because Six4Three and its legal team have admitted to leaking Facebook's confidential and highly confidential materials in violation of multiple orders of the Superior Court. As part of the investigation into these violations, it has recently come to light that Six4Three retained your client, **Redacted**, to consult on the litigation, and, in the process, disclosed Confidential and Highly Confidential Facebook documents to **Redacted**.

At the outset, we disagree that **Redacted** "has been cut out from the process to date." Six4Three's counsel of record has stated that, until early January 2019, **Redacted** served as a retained expert in this litigation. In that capacity, **Redacted** worked for and at the direction of Six4Three's counsel of record, and there is no reason that **Redacted** would have been "cut out from the process" or "kept from these proceedings" except at the hands of the Six4Three legal team with whom he was working. In any event, the San Mateo Superior Court maintains public records of this litigation online. Those records, and developments in this case generally, have been the subject of international media attention for months. Indeed, **Redacted** has commented extensively on these proceedings since Mr. Kramer illegally disclosed Facebook's Confidential and Highly Confidential information to the DCMS Committee. See generally <https://twitter.com/podehaye/>.

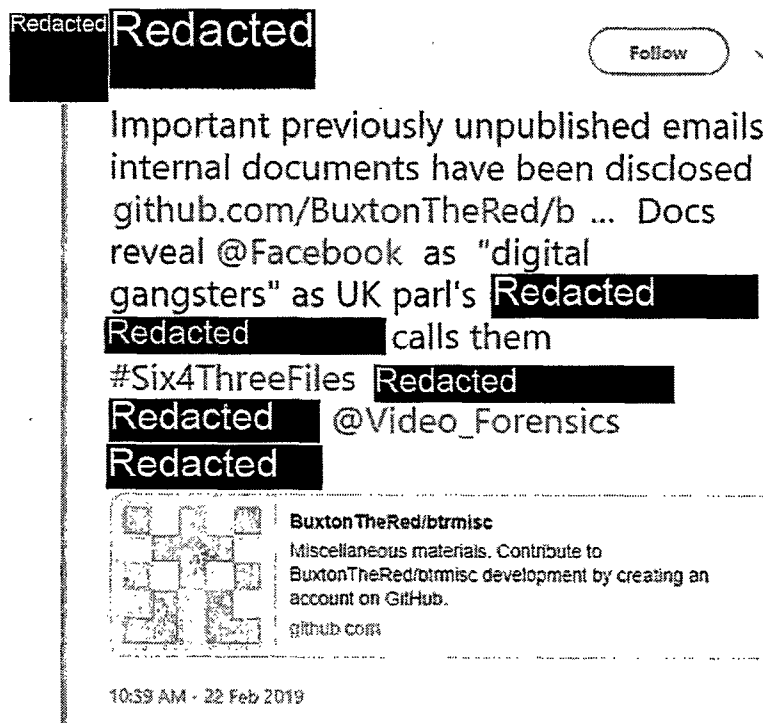
You asked that Facebook provide documents related to Six4Three's discussions of **Redacted** role in the litigation with journalists. Because these are communications between Six4Three's legal team (with whom **Redacted** was coordinating) and members of the media (with whom we have reason to believe

[Redacted] was directly in contact), we assume that [Redacted] is already aware of these communications or can readily obtain them from the Six4Three team with whom he was working. Suffice to say, the communications show that Six4Three and its legal team specifically suggested that journalists could rely on [Redacted] as an anonymous source who could confirm Six4Three's claims about the contents of Facebook's Confidential and Highly Confidential documents for international media, and expressly discussed the need to keep [Redacted] role in these communications secret from Facebook and the Court. Those discussions occurred within days of [Redacted] engagement as an expert in this action.

While we appreciate your effort to provide "some clarity to [Redacted] role," your letter raises more questions and concerns than it answers. Having agreed to be subject to the jurisdiction of the Superior Court in San Mateo County for any enforcement proceedings relating to the Court's protective order and having expressed his desire to be directly involved in this inquiry, we expect that [Redacted] will have no objection to promptly addressing the following queries so that Facebook and the Court can evaluate the appropriate next steps. In particular:

First, although your letter acknowledges that [Redacted] was provided with the Court's protective order and executed the certificate declaring under penalty of perjury that he would be bound by it, your letter is noticeably silent on whether [Redacted] actually complied with the terms of the protective order. As you know, the Court's order demanded that [Redacted] address in a sworn declaration whether he, among other matters, complied with the Stipulated Protective Order by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information[.]" That declaration was due yesterday, March 5, 2019. To be clear, that declaration should be made under penalty of perjury under California law and should address whether [Redacted] at any time confirmed, verified, or commented *in any way* on media or third-party inquiries regarding Facebook's Confidential and Highly Confidential information. We remind you that [Redacted] "consent[ed] to the jurisdiction of the San Mateo Superior Court for the purpose of enforcing the [Stipulated Protective Order.]" Please comply immediately.

Second, and relatedly, your letter is also noticeably silent on what [Redacted] did with Facebook's Confidential or Highly Confidential information (or copies, summaries, excerpts, or compilations thereof) between the time he was engaged in this matter and executed a protective order certificate (both on May 14, 2018) and when he says he destroyed all Facebook Confidential and Highly Confidential information ("between 4 January 2019 and 11 January 2019."). This silence is particularly concerning because, based on Annex 1 to your letter, it appears that a number of documents that were provided to [Redacted] pursuant to the requirements of the protective order (and otherwise sealed by the Court) have since been publicly leaked via a Github share maintained by [Redacted]. In publicizing the leak of these sealed materials on Twitter, an investigative journalist working with [Redacted], specifically pointed to [Redacted].



Alone, and in conjunction with the other information we have learned to date, Facebook naturally has serious concerns that [Redacted] may have been involved (directly or indirectly) in the distribution of confidential and sealed Facebook documents (or the disclosure of information contained in those documents) in violation of multiple court orders. Again, the Court has ordered that [Redacted] address in a sworn declaration whether he complied with the Stipulated Protective Order by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information[.]" That declaration should therefore detail and attach all communications and correspondence between [Redacted] (or anyone working with or on behalf of [Redacted], including counsel), on the one hand, and (1) the DCMS Committee; (2) [Redacted] (or [Redacted] staff); (2) [Redacted]; (3) [Redacted]; (4) [Redacted]; (5) any other member of the media; (6) [Redacted]; (7) any other governmental agency; (8) any non-profit organization; or (9) any other third party, on the other hand, since May 14, 2018 and relating to Facebook. The sworn declaration should specifically identify (but should not be limited to) any disclosure of any Facebook document or any information contained in a Facebook Confidential or Highly Confidential document (or summary or compilation thereof) to any third party, or any discussion with any third party related to the subject matter of the Confidential and Highly Confidential Facebook documents received by [Redacted].

Third, your letter does not address at all communications between Six4Three and its legal team and third parties (including media, governmental agencies, or non-profits) in which [Redacted] was involved. Although we have yet to receive all of the relevant documents, the limited information we have to date shows that [Redacted] was involved in communications between Six4Three and its legal team and such

third parties, including at least [Redacted]. [Redacted] sworn declaration should therefore detail and attach all communications and correspondence regarding Facebook Confidential and Highly Confidential material between Six4Three and its legal team and third parties (including media, governmental agencies, or non-profits) in which [Redacted] was involved.

Fourth, your letter states that [Redacted] is not a lawyer and was therefore reliant on Birnbaum & Godkin, LLP to understand the US process and the terms of the Protective Order,” and also acknowledges “Klein & Gross LLP [sic] were appointed as [Redacted] agent for service of process, on the recommendation of Birnbaum & Godkin, LLP. [Redacted] was not provided with any independent legal advice on the terms of the order at the time it was provided to him nor when it was executed.” [Redacted] sworn declaration should therefore detail his understanding of his obligations under the protective order, including any advice or instructions he received from Birnbaum & Godkin or Gross & Klein relating to the requirements of, or compliance with, the protective order.

Fifth, your letter raises serious questions as to the scope of [Redacted] engagement. Your March 5, 2019 letter states that [Redacted] “was approached by Mr Godkin to act as an expert on public interest elements of the *Six4Three* litigation.” [Redacted] sworn declaration should therefore specifically detail the scope of his engagement, (including the specific “public interest elements of the *Six4Three* litigation” on which he was purportedly consulting) and what expertise [Redacted] understood he was offering on those topics. For clarity, that sworn declaration should also detail the bases for your statement that the “terms of the retainer were not well drafted but that [Redacted] was retained by Birnbaum & Godkin, LLP to ‘assist [them] in reviewing Facebook’s arguments related to digital privacy issues.’ This is what our client understood his role to be and acted at the instruction of Birnbaum & Godkin, LLP and their clients in this litigation.”

Sixth, you state that [Redacted] “maintained a contemporaneous record of the documents he had received, as and when he received them.” Please produce this record immediately. In addition, [Redacted] sworn declaration should attest to its authenticity and explain its contents. Your disclosure of “Annex 1: Documents deleted” is incomplete, including because it does not (1) identify which discovery material Six4Three and its legal team provided to [Redacted] or when, or (2) identify the “internal case summaries” that [Redacted] received or when.

Seventh, as you know, Paragraph 4 of the Stipulated Protective Order in this matter provides that, “if [a] party chooses a consultant or expert employed by the opposing party or one of its competitors, the party shall notify the opposing party . . . before disclosing any Confidential Information to that individual[.]” See Stipulated Protective Order ¶ 4(d). Please provide a list of [Redacted] employers or engagements since April 10, 2015.

Finally, to the extent not already requested above, we request that you promptly produce all communications or correspondence between [Redacted] (or anyone working with or on behalf of [Redacted], including counsel) and Six4Three, [Redacted], [Redacted], or anyone at Birnbaum & Godkin or Gross & Klein relating to Facebook or the litigation between Six4Three and

Ravi Naik
March 6, 2019
Page 5

Facebook. Six4Three's legal team and **Redacted** have put those communications directly at issue through their statements on these subjects, and Facebook and the Court are entitled to evaluate the accuracy and completeness of those statements.

We request a response to these questions no later than close of business on March 7, 2019 so that we can promptly raise any outstanding questions or issues with the Court.

Very truly yours,



Sonal N. Mehta

SNM:za

cc: godkin@birnbaumgodkin.com
SERVICE-SIX4THREE@durietangri.com

Sonal N. Mehta

Durie Tangri

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enquiries@itnsolicitors.com

www.itnsolicitors.com

By email: smehta@durietangri.com

07 March 2019

Our ref: RAN/32411

Dear Ms Mehta

Redacted

We write further to your letter of 6 March 2019. That letter raises a number of issues that we address in turn below. However, that letter also clarifies that the order of 1 March 2019, in so far as it related to our client, was procured on the basis of conjecture, misrepresentation and a misunderstanding of **Redacted** position.

We accordingly ask for you to provide this correspondence to the Honorable Judge V. Raymond Swope, along with the relevant evidence, for the court to reconsider the terms of the order of 1 March 2019 made against our client. If you refuse to do so, please let us know and provide us with the Judge's contact details so we may write to him directly.

We address the issues arising in turn below.

1. Representation

You "disagree" that **Redacted** has been cut out of the process leading to the order relating to him. The basis for this assertion is that **Redacted** "worked for and at the

direction of Six4Three's counsel of record, and there is no reason that [Redacted] would have been "cut out from the process" or "kept from these proceedings" except at the hands of the Six4Three legal team with whom he was working." This position is misconceived and contradictory.

Your client's position is based on (1) our client having previously been instructed to provide expert assistance to the Plaintiffs in this case and (2) that the *Six4Three* legal team would have kept him abreast of developments. This is misconceived:

1. [Redacted] was instructed to provide expert assistance to the Plaintiffs. He was not a Plaintiff himself nor was he represented by Birnbaum & Godkin, LLP.
2. You accept that your client made no efforts before, during or after their *ex parte* application to contact our client.
3. You accept that your client expected our client to have been updated by the Plaintiff and their legal team. There was no reason for the Plaintiffs or Birnbaum & Godkin LLP to keep him updated. That you expected he would betrays your client's misunderstanding of our client's role. You have sought to portray him as somehow in cahoots with the Plaintiffs. This could not be further from the truth and no evidence has been provided otherwise.
4. In fact, [Redacted] was not represented at all throughout these proceedings. He had no reason to be legally represented, as an independent expert to the proceedings.
5. Despite your assertion that the legal team representing the Plaintiffs have breached the order, you suggest that our client seek their legal counsel. This is a curious suggestion for you to make.
6. Rather, our client has sensibly instructed independent legal advice at his own expense.

You further state that the documents that led to the order are available online. This is a non sequitur. Your application was made on an *ex parte* basis.

There was no reason for the application to be made on an *ex parte* basis in respect of our client, given your previous lack of engagement with our client. Rather, you should have reached out to our client for his position as soon as you learned of his involvement and before making the application. Had you have made contact with our client, you could have avoided the inaccuracies and misrepresentation of our client contained within your *ex parte* application. You could have also avoided this entire chain of correspondence. Regrettably, you did not do so.

Whilst our client appreciates that your client had concerns over the integrity of the documents and sought to preserve their position, he has played no part in the concerns articulated in your *ex parte* application. This much would have been clear had you simply sought his position. You did not do so.

Our client's position is clear. He was instructed to act as an independent expert and did so. He acted on instructions at all times. He now finds himself caught up in the wrongdoing of others. Rather than understand his position, Facebook have sought to perpetuate his problem by way of a misguided and flawed *ex parte* application

2. Purpose of the 1 March 2019 Order

Having considered the *ex parte* application and supporting evidence, we note that your client's have already identified those that have breached the Protective Order. In particular, your letter of 6 March 2018 expressly states that "Six4Three and its legal team have admitted to leaking Facebook's confidential and highly confidential materials in violation of multiple orders of the Superior Court."

On the face of the application, it was designed to (1) contain further breaches and (2) understand the events leading to the disclosure of material by the DCMS Committee in the United Kingdom. To that end, our client can confirm:

1. He had no involvement in the passing of confidential or highly confidential information to the DCMS Committee, whether from the Plaintiff, their legal team or otherwise. Your client is already aware of the circumstances and chronology of those events. The individuals that have accepted being involved in this breach have not named [Redacted] as being involved, as he is not involved. You have no evidence to suggest otherwise and your client has rightly not suggested that our client had any involvement.
2. In respect of further breaches since the DCMS leak, our client was again not involved. As you are aware, our client deleted all the information as he was requested to by 11 January 2019.
3. Our client is not aware of how [Redacted] received these documents. The basis for your client's assertion that our client is somehow involved with [Redacted] is that he included [Redacted] in a tweet. Our client does not know why [Redacted] included him in that tweet but can assume it is [Redacted]. Holding our client responsible for the actions of a third party on Twitter is without merit. It would be unfair to hold your client responsible for everyone that mentions them on social media. Our client should not be expected to be treated in any other way.

Our client was not therefore involved in the breaches of concern to Facebook or the court. No evidence has been put forward to suggest otherwise. Indeed, Facebook do not make such a claim but rather limit their accusations against our client to conjecture and misrepresentation of the evidence.

3. The *ex parte* application

Having considered the *ex parte* application, we note that it is inaccurate, misleading and based on no more than conjecture. We detail the inaccuracies below.

We ask that you inform the court of this material misrepresentation accordingly so that the court can reconsider the terms of the order vis-à-vis our client.

The *ex parte* application states¹ (sic) "Gross & Klein produced a new e-mail sent by Redacted [REDACTED], Six4Three's supposed "expert" willing to confirm details of Facebook's confidential information to reporters "anonymously." That suggests that there is evidence that Redacted [REDACTED] sent an email stating that he is willing to provide or confirm details to reporters "anonymously". This is the totality of the evidence put forward against our client. There is no other submission made against Redacted [REDACTED] at all.

Our client strenuously denies having sent an email stating that he would act to provide or confirm information to reporters anonymously. He did not do so. We accordingly asked you for evidence of him having sent such an email in our letter of 5 March 2019. You refused to do so, instead directing our client to the *Six4Three* team (i.e. the parties that have admitted breaching the terms of the order).

No such evidence will exist. We assume that your client has instead quoted an email from a third party, as though it had come from our client. This is disingenuous, misleading and concerning, particularly where the application was made on an *ex parte* basis. Your client would have been under an obligation of full and frank disclosure when making an application on such a basis. It is regrettable that you did not comply with that obligation, which in turn undermines the application against our client in its entirety.

The 1 March 2019 order, in so far as it affects our client, was in fact procured on the basis of this single inaccurate issue. As it was made on an *ex parte* basis, our client has been unable to explain his position to the court and without having had a chance to understand the basis for the concerns against him. Having now considered those concerns, it is clear that they have no evidential basis.

This leaves two choices for your client:

1. Provide our client with the evidence that: (1) he has breached the terms of the Protective Order; and (2) he stated that he was willing to share or confirm confidential or highly confidential information to reporters "anonymously." Despite

requesting this in our letter of 5 March 2019, no such evidence has been provided to our client and our client understands that none will be available. To be clear, what a third party said about our client is irrelevant. Our client cannot be held responsible for the actions of a third party.

2. Alternatively, your client must accept that they misled the court in the *ex parte* application and ask the court to review the order against our client.

Your client will appreciate that the threat of perjury against our client is something he takes very seriously. However, at present that threat derives from conjecture at best and misrepresentation at worst.

Our client has had to pay for independent legal advice, for an issue that is not of his making. In order for the court and our client to understand if there is any basis for the suggestion that he has breached the Protective Order, such to require further information from our client, please ensure you respond to the issues raised above by 16:00 GMT on 9 March 2019.

To be clear, our client is prejudiced by the manner in which Facebook sought the order and the inaccuracies within the *ex parte* application. Facebook have also already identified those that have breached the Protective Order and our client is no longer in possession of the documents. There is therefore little to be gained from our client providing further evidence to the court.

In order to avoid further prejudice, unfairness and cost to our client, we suggest that the court should release our client from the need for a further statement (1) in light of our correspondence and (2) in the absence of any evidence that he has breached the terms of the Protective Order.

Please ensure that this correspondence is placed before the Honorable Judge V. Raymond Swope as a matter of urgency.

¹ Page 7 lines 7 – 9

4. Disclosure requests

You have made a series of disclosure requests from our client. Those request go beyond the terms of the 1 March 2019 order and there is in fact no basis for these requests. Rather, the requests are an expansive, abusive and ill-judged fishing expedition. For example, your request for “a list of Redacted employers or engagements since April 10, 2015” is simply absurd and without legal footing.

That your client would embark on such a course in fact betrays the real purpose for your client's application – to seek to find evidence from our client of a series of unrelated matters. The simple fact is that there is no evidence that our client has breached the Protective Order and there is no further justification for such an expansive disclosure request.

However, in order to assist your client, our client can confirm:

1. As above, our client does not know how Redacted received the confidential or highly confidential documents.
2. Our client received no legal advice at all on the terms on the Protective Order.
3. The annex to our letter of 5 March 2019 was an entire list of documents that he has received.
4. As you are aware, our client has deleted all of the confidential or highly confidential information. He cannot therefore produce evidence that is not in his control. We are surprised by your request for information that our client has already told you he has deleted.

Our client provided the documents to your client on 5 March 2019 to assist your client and the court. As above, the Protective Order was procured from the court on 1 March 2019 on the basis of inaccurate information. Our client accordingly reserves his position in respect of that order until the court has had an opportunity to understand our client's position and submissions on the *ex parte* application.

5. Summary

As the *ex parte* application was based on misrepresentation of the evidence, inaccuracies and conjecture, our client will not be complying with your requests until the court has had an opportunity to understand [Redacted] position.

As stated above, our client has been prejudiced by the manner in which Facebook sought the order and the misrepresentation of the evidence in the *ex parte* application. Had he been provided with an opportunity to explain his position before the application was made, he could have done so. Regrettably and as detailed above, the application was made in the absence of his position and proceeded on the basis of misrepresented facts. Facebook have also identified those that have breached the order and our client is no longer in possession of the documents. There is therefore little to be gained from our client providing further evidence to the court but producing such documentation would be costly and prejudicial to our client.

In order to avoid further prejudice and cost to our client, we suggest that the court should release our client from the need for a further statement in the absence of evidence that he has breached the terms of the Protective Order. Should the court, after a review of this correspondence, further order our client to provide this information he will review his position at that stage. However, we ask you to ensure that this correspondence is put before the court in determining the necessity of any further order against our client.

We therefore request that a copy of this letter, our letter of 5 March 2019 and your reply of 6 March 2019 is provided to the court and the Honorable Judge V. Raymond Swope as a matter of some urgency. If you are not willing to do so, please provide us with the contact details for the Judge accordingly so we may make contact directly.

Yours sincerely

Irvine Thanvi Natas Solicitors
cc. David Godkin, Birnbaum & Godkin, LLP

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March 8, 2019

VIA EMAIL

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Re: [Redacted]

Dear Mr. Naik,

We received your letter dated March 7, 2019 (hereinafter "Naik March 7 Letter"). We appreciate your effort to clarify certain questions set forth in our letter dated March 6, 2019 (hereinafter "Mehta March 6 Letter"). Specifically, we understand your position that [Redacted] (1) received no legal advice about the protective order; (2) received only those documents identified by Annex 1 to your March 5, 2019 letter, (3) had no involvement in the passing of confidential or highly confidential information to the DCMS Committee, and (4) does not know how [Redacted] received Facebook's confidential or highly confidential information, including those documents leaked via [Redacted] Github share.

Despite these responses, several of Facebook's most important questions remain outstanding. In addition, your letter demonstrates a fundamental misunderstanding of this litigation and your client's role in the dissemination of Facebook's confidential and highly confidential information. We clarify those issues below.

First, your letter does not answer the simple, central question posed by Facebook and the Court: Did [Redacted] comply with all terms of the protective order, including by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information"? At risk of being pedantic, that question is not answered by evasive statements such as, "[Redacted] has played no part in the concerns articulated in your *ex parte* application," "[Redacted] was again not involved [in further breaches since the DCMS leak]," and "[Redacted] was not . . . involved in the breaches of concern to Facebook or the court." Nor is it any answer that certain individuals have admitted their breach of the Stipulated Protective Order in this matter, e.g., Naik March 7 Letter at 3: Facebook's question is whether [Redacted] breached that order.

Pursuant to that inquiry, Facebook asked [Redacted] specific questions regarding his compliance with the protective order. *See generally* Mehta March 6 Letter at 2-4. Your letter makes no attempt to answer the vast majority of these questions. For example and without limitation, your March 7, 2019 letter:

- neither denies that [Redacted] communicated with individuals involved in the release of Facebook's documents, nor attaches such communications. *See* Mehta March 6 Letter at 3 (requesting communications with "(1) the DCMS Committee; (2) [Redacted] (or his staff); (2) [Redacted]; (3) [Redacted]; (4) [Redacted]; (5) any other member of the media; (6) [Redacted]; (7) any other governmental agency; (8) any non-profit organization; or (9) any other third party," since May 14, 2018 and relating to Facebook).
- neither denies that [Redacted] received communications between Six4Three and its legal team and third parties, nor attaches such communications. *See* Mehta March 6 Letter at 3-4.
- fails to set forth [Redacted] understanding of his obligations under the protective order, including whether that order prevented him from anonymously confirming for journalists or third parties the substance of Six4Three's allegations or the content of Facebook's confidential and highly confidential documents based on [Redacted] review of those documents. *See* Mehta March 6 Letter at 4.
- fails to identify the specific "public interest elements of the *Six4Three* litigation" on which [Redacted] was purportedly consulting, and what expertise [Redacted] understood he was offering on those topics. *See* Mehta March 6 Letter at 4.
- neither attaches the "contemporaneous record of the documents [Redacted] had received," nor provides a basis for refusing to do so. *See* Mehta March 6 Letter at 4.
- neither attaches communications between [Redacted] and Six4Three or its legal team, nor provides a basis for refusing to do so. *See* Mehta March 6 Letter at 4-5.

Rather than answer these simple questions, your letter argues that [Redacted] does not have to: The Court's Amended Case Management Order No. 19, your letter argues, resulted from a "material misrepresentation," whereby Facebook "quoted an email from a third party, as though it had come from our client." *See* Naik March 7 Letter at 5-6. We find this response curious, because it is false and because you purport to have "considered the *ex parte* application and supporting evidence" and thus know that there was no suggestion that [Redacted] sent the email, only that it evidences Six4Three's plan to use [Redacted] to leak confidential information to the press. Simply put, your letter mischaracterizes the bases for Facebook's concerns regarding [Redacted]. At risk of being repetitive, we set them forth below.

In late March 2018, Six4Three's CEO—Redacted—contacted reporters at *The Guardian* to discuss Six4Three's lawsuit against Facebook. Redacted spoke by phone with Redacted on March 29, 2018, after which he sent her an e-mail stating that he "look[ed] forward to . . . connecting with the folks you mentioned." See BG007204. Redacted replied a few days later: She said that she "[had not] managed to catch up with Redacted or Redacted yet[.]" *Id.* Weeks passed, and Redacted wrote to Kramer again: "I also spoke to Redacted," she wrote, "Redacted Redacted." Kramer responded a few days later, requesting "an introduction to Redacted" so that Six4Three could urge Redacted to file an amicus brief to unseal hundreds of confidential and highly confidential Facebook documents. See BG007206. Redacted sent Redacted personal e-mail address to Kramer on May 4, 2018 and said that "Redacted said he'd be happy for you to get in touch[.]" BG007208.

Five days after that, Redacted told Redacted that Six4Three had "reached out to Redacted" and "setup [a call] for next week." BG007211. Redacted wrote back within days, saying that she "had a chat with Redacted about how this might work." BG007212 (emphasis added). An hour later, Kramer responded, describing Six4Three's "off the record" conversations with "about a couple dozen news organizations." BG007213. Kramer then told Redacted that Redacted had agreed to serve as Six4Three's expert: "As soon as Redacted gets the required document back to us," Mr. Kramer wrote, "*we will share the evidence with him since he has agreed to serve as an expert witness in the case.*" BG007213 (emphasis added).

Three days later, on May 14, 2018, Redacted executed an engagement letter with Six4Three and the Certification annexed to the case's protective order. Under the engagement letter, Redacted agreed to "*refrain from speaking with anyone about this matter* and [to] treat all communications with my client and my firm as privileged." Pursuant to the protective order, Redacted agreed not to "reveal or discuss [Confidential Information or Highly Confidential Information] to or with any person who is not entitled to receive such information[.]"

A week after Redacted executed the engagement letter and protective order, Kramer and Redacted met face-to-face. Redacted sent an e-mail after the meeting to "lay out our thoughts at the moment." BG006391. *The Guardian's* "ideal" coverage plan, she said, would include "[a] main news story. . . And — ideally — some supporting quotes from Redacted. I understand these need to be anonymous but it would still be really useful to have these I think." Redacted—Six4Three's sole investor and a member of Six4Three's "legal team"—wrote back that night, asking whether Redacted could "*be an anonymous source verifying our allegations* without disclosing him as an expert witness in the case." BG006395 (emphasis added). Redacted responded a few minutes later: "Re Redacted she said, "*understood, though would still like to use anon quotes if possible.*" BG006395 (emphasis added). Redacted then responded to that message, writing, "*I think anonymous quotes from Redacted would be fine* so long as he isn't identified as an expert witness[.]" BG006398 (emphasis added). A few minutes later, Redacted wrote Redacted again: "The key thing with Redacted is that if the article identifies him as an expert witness *or bases his confirmation of the allegations on the fact that he has reviewed the evidence*, then Facebook will cry foul[.]" BG006399 (emphasis added).

Around the time these discussions took place, Six4Three's legal team was urging media and non-profit organizations to file amicus briefs to unseal hundreds of Facebook documents improperly lodged in connection with an unrelated filing. [Redacted] was instrumental in that campaign, as well. Despite signing a contract on May 14, 2018 that he would not "speak[] with anyone about this matter," [Redacted] *the very next day* e-mailed reporters at the Associated Press—copying Six4Three's legal team—to suggest a call about "how journalists could benefit from the discovery process." BG001308. A day after that, [Redacted] played press secretary again when he connected Six4Three's legal team to a POLITICO reporter in Brussels and suggested a call. See BG000149. Two weeks later, Six4Three's legal team copied [Redacted] on an e-mail exchange with [Redacted] about amicus briefs. See GKLLP000200. After [Redacted] suggested a conference call to discuss the case with the nonprofit, [Redacted] responded, "I am ready to join at that time if need be." *Id.*

As these facts demonstrate, Amended Case Management Order No. 19 was not "procured on the basis of [a] single inaccurate issue," and your suggestion otherwise, appears to be based on a misunderstanding of the record or misinformation provided to you by others. See Naik March 7 Letter at 5. Either way, multiple e-mail exchanges involving [Redacted] over the course of weeks in the spring of 2018 suggest that he reviewed Facebook's confidential and highly confidential information in order to further Six4Three's objectives with the news media. For that reason, Facebook repeats its simple request: please provide a sworn statement (under penalty of perjury in California) addressing the specific questions we have raised, including in particular a sworn statement that [Redacted] complied with all terms of the protective order, including by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information."

Second, specifically regarding our request for [Redacted] employment and engagement history, you call that request "simply absurd and without legal footing." See Naik March 7 Letter at 7. We disagree. [Redacted] agreed to be bound by the terms of the protective order, which require him to provide this information. Specifically, Paragraph 4(d) of the protective order provides that, "if the [retaining] party chooses a consultant or expert *employed by the opposing party or one of its competitors*, the party shall notify the opposing party . . . before disclosing any Confidential Information to that individual and shall give the opposing party an opportunity to move for a protective order preventing or limiting such disclosure[.]" (emphasis added). Only [Redacted] knows whether he has been employed or engaged by one of Facebook's competitors since the onset of this litigation. Accordingly, Facebook again requests that [Redacted] provide a list of his employers or engagements since April 10, 2015. Anything less deprives Facebook of the rights to which it is entitled under the protective order—to which [Redacted] agreed to be bound.

Third, your letter makes much of the fact that Facebook sought relief on an *ex parte* basis. *E.g.*, Naik March 7 Letter at 3, 5, and 8. We do not think it productive to engage in point-for-point argument on this subject. We note only that Facebook was entitled to seek *ex parte* relief because Facebook faced—and, indeed, continues to face—"irreparable harm [and] immediate danger" as a result of Six4Three's

Ravi Naik
March 8, 2019
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abuse of Facebook's confidential and highly confidential information. *See generally* Cal. R. Ct., rule 3.1202(c). The Court itself acknowledged this in granting the *ex parte* application.

Fourth, your letter requests that Facebook forward your correspondence to the Court. *See* Naik March 7 Letter at 8. It is not Facebook's role to inform the Court regarding your correspondence. We suggest you discuss this matter with Mr. Godkin who engaged **Redacted** and was responsible for supervising his engagement.

Finally, as to your comment about Facebook's "real purpose" for its application, *see* Naik March 7 Letter at 7, Facebook's concern is about the improper disclosures of its confidential information and the integrity of the Court's orders. Your client promised to comply with all the terms of the Protective Order. We are seeking—and are entitled to—answers on whether he did so.

Very truly yours,



Sonal N. Mehta

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13 March 2019

Our ref: RAN/32411

Dear Ms Mehta

Redacted

We write further to your letter of 8 March 2019. We address the various issues arising in that letter in turn.

1. Misleading application

Your letter of 8 March 2019 seeks to provide a justification for the terms of your client's *ex parte* application against our client. Regrettably, that letter simply confirms that your client has misled the court. In particular:

1. The declaration by Mr Abrahamson stated "Gross & Klein produced a new e-mail sent by **Redacted**, Six4Three's supposed "expert" willing to confirm details of Facebook's confidential information to reporters "anonymously".
2. That statement expressly declares that our client was "willing to confirm details of Facebook's confidential information to reporters "anonymously". There is no evidence of our client having said this, yet your client / Mr Abrahamson presented this as fact.

3. We asked for evidence of this purported email, in our letters of 5 and 7 March 2019. None has been forthcoming.
4. Rather, the material contained in your letter of 8 March 2019 confirms that you have no evidence that our client said that he would confirm details of the confidential or highly confidential information, anonymously or otherwise. None will be available. Instead, you have confirmed our client's suspicion that your client has misled the court, by quoting third parties as though that quote was directly taken from our client.

In sum, Mr Abrahamson's statement is misleading and seeks to portray those quotes as coming directly from our client. You have not denied that this was a misleading statement nor have you sought fit to explain this error to the court.

You state that our letter of 7 March 2019 shows a "misunderstanding of this litigation". To the contrary, our client now understands full well that you had misled the court. Misleading the court in any litigation is a serious procedural error. In fact, misleading the court is a very serious matter indeed in any context.

2. Terms of the order of 1 March 2019

Further and contrary to your letter of 8 March 2019, our client has not sought to deny that your client is entitled to make an *ex parte* application. Rather, our client's concern is that your client has done so on false pretences. Your letter of 8 March 2019 confirmed our client's fears.

At its highest, you have cited third parties who explain plans *about* our client. He was not aware of those plans and was not copied into that correspondence. Those quotes even go so far as confirming that our client was not aware of the case, let alone in receipt of the confidential / highly confidential documents at that stage. You nevertheless quote from those emails (of which our client was unaware) as though those words had come from our client. This was a misrepresentation.

Your client sought and procured the order on the basis of this single inaccurate issue. There is no other evidence against our client. We presume you sought to mislead the court as you in fact have no evidence that our client breached the terms of the Protective Order. That misrepresentation has nonetheless led to a punitive order against our client.

Your client has then made a series of requests from our client following that illicitly obtained order. To that end:

1. The vast majority of your requests are beyond the terms of the order of 1 March 2019 or the Protective Order. We assume you are either using the fact that such orders exist to seek extraneous information from our client or deliberately choosing to ignore the scope of the orders. Either way, this is not reasonable or fair to an independent party to proceedings.
2. You have confirmed that you will not provide this correspondence to the court and are refusing to provide us with the contact details for the court. Aside from being an astonishing position to take (no doubt because you are unwilling to advise the court that you have procured an order on the basis of material misrepresentation), we note that you have included our correspondence of 5 March 2019 on the public docket. There is no justification for this inconsistent position. The only basis for this inconsistency is the revelation of Facebook's misrepresentation.
3. You also confirm our understanding that the purpose of the order is to prevent further breaches. That concern is not applicable to our client, as he does not have the information to leak. He deleted it as he was requested to do.

Further, we note that your letter of 8 March 2019 avoids answering the vast majority of the questions raised in our letter of 7 March 2019. For instance, you have not explained why you misled the court or why you did not contact our client before making the *ex parte* application. You have also refused to provide the contact details for the Judge.

In this context, your letter of 8 march 2019 has not progressed matters but rather affirmed that our client should not engage with your expansive requests. Rather, our client repeats his position, as articulated in our letter of 7 March 2019. Our client has been accused of various breaches of the Protective Order, of which your client has no evidence. Our client is unaware why you consider that he has breached the terms of the order. Rather than explain this to the court, you have instead deliberately misled the court to procure an order against our client. That order should therefore be reviewed by the Honorable Judge, in light of the misrepresentations made in your *ex parte* application. If the Honorable Judge still considers that there is a need for our client to provide a statement, our client will consider his position at that stage.

3. Further matters

You have repeated the request for our client's employment and engagement history. You cite the Protective Order as a legal basis for this request. You have misread the Protective Order. That Protective Order places no such burden on our client. That order provides no rights against our client for Facebook. To the contrary, the terms of the order exist solely between the Plaintiffs and Facebook. Rather, you have no legal entitlement to information from our client and you have not provided any legal basis to suggest you are otherwise entitled to it.

Further, we note your suggestion that our client should ask Mr Godkin to provide our correspondence to the court. This is a rather remarkable suggestion for you to make, given that your case is that Mr Godkin has breached the terms of the order. We (surprisingly) find ourselves having to remind you that our client is not represented by Mr Godkin. Rather, you were requested to assist our client and the court by providing the court with our correspondence.

In light of your unreasonable refusal to provide our letter of 7 March 2019, we repeat our request for the contact details for the Honorable Judge V. Raymond Swope. If we do not receive those details by 4pm GMT on 15 March 2019, our client reserves his rights in respect of your client.

4. Conclusion

The facts are that (1) Facebook has misled the court and (2) you are refusing to tell the court or to provide the contact details for our client to inform the court of the same.

In order to avoid further prejudice and cost to our client, we put you on notice that we intend to provide our entire correspondence chain to the court. In doing so, we will inform the court of the material misrepresentation made in the statement by Mr Abrahamson. In light of that misrepresentation, we will suggest that the court should release our client from the need for a further statement in the absence of evidence that he has breached the terms of the Protective Order or that he is likely to.

In our letter to the court, we will also ask the court to weigh the need for the order against the costs to our client. Given that Facebook is unable to provide any evidence that our client has breached the order and went so far as misleading the court to procure the order, we anticipate the court will side with our client. Should the court, after a review of this correspondence, nevertheless further order our client to provide this information he will review his position at that stage.

We accordingly repeat our request for the contact details of the Judge so that we may write to him directly.

Finally, we note that you have put the Protective Order signed by our client onto the court docket without redacting our client's home address and telephone number. This is extremely concerning for our client. Please take urgent steps to redact this personal information from the Protective Order as currently on the docket.

Yours sincerely

Irvine Thanvi Natas Solicitors

cc. David Godkin, Birnbaum & Godkin, LLP

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rnaik@itnsolicitors.com

Re: **Redacted**

Dear Mr. Naik,

You have now written almost 20 pages about your client's involvement in Six4Three's case. But you refuse to answer the simple question whether your client, **Redacted**, complied with the protective order. Facebook fears that your silence on this question means that **Redacted** violated that order. Regarding your specific disagreements, Facebook has several responses.

First, we disagree with your position that we have provided "no evidence" that **Redacted** breached the protective order. *See* March 13, 2019 Letter at 4. Our March 8, 2019 letter provided an exhaustive recitation of documentary evidence implicating your client. *See generally* March 8, 2019 Letter at 2-4. We direct you to that letter for a fuller restatement of the evidence regarding your client. But as examples, our March 8, 2019 letter explained how Six4Three's legal team and journalists explicitly discussed using anonymous quotes from your client to further Six4Three's media objectives. *Id.* Those discussions took place *after* your client had signed his engagement letter with Six4Three and the protective order's Certification. *Id.* We also noted that your client personally contacted multiple reporters to discuss Six4Three's case *within days of executing an engagement letter barring him from "speaking with anyone about this matter."* Finally, we noted that your client offered to join a call discussing the case with a nonprofit group after executing the protective order's Certification. *See id.* (quoting GKLLP00020). Your letter refuses to explain any of this conduct.

Instead, your March 13, 2019 letter clings desperately to a single line from Facebook's *ex parte* application¹, which reads: "Gross & Klein produced a new e-mail sent by **Redacted**,

¹ Your letter misrepresents the record on this point. The supporting declaration by Mr. Abrahamson does *not* state that "Gross & Klein produced a new e-mail sent by **Redacted**, Six4Three's supposed 'expert' willing to confirm details of Facebook's confidential information to reporters 'anonymously'." *See* March 13, 2019 Letter at 1. In fact, as

March 13, 2019

Page 2

Six4Three's supposed 'expert' willing to confirm details of Facebook's confidential information to reporters "anonymously." *Compare* March 13, 2019 Letter at 1, with Def.'s Ex Parte App. for an Order Enforcing the Stipulated Protective Order at 7:7-9. To be clear, that line does *not* state that [Redacted] said *anything* in the produced e-mail: Rather, the text—"Six4Three's supposed 'expert' willing to confirm details of Facebook's confidential information to reporters 'anonymously'"—is an *appositive*. An appositive is set off by a comma and "provides an explanatory equivalent" to a noun—in this case, to [Redacted]. See generally THE CHICAGO MANUAL OF STYLE at 314 (16th ed. 2010). Indeed, Facebook's brief would not make sense if "willing to confirm details" modified "e-mail"—simply put, people "will[]"; e-mails do not.

Moreover, your letter conveniently omits mention of *the very next line* in Facebook's *ex parte* application, which quoted directly from the e-mail that you accuse Facebook of misrepresenting: "In that e-mail, sent *mere days* after Six4Three explained the expert scheme to [Redacted], [Redacted] told the nonprofit [Redacted] ([Redacted]) that he was 'ready to join [a conference call] at that time if need be.'" See *id.* at 7:9-12. Were that not enough, Facebook placed [Redacted] e-mail before the Court. See Abrahamson Decl. Supp. Def.'s Ex Parte Appl. (Feb. 25, 2019), Ex. 4. Facebook did not misrepresent your client's statements.

Second, we disagree that our requests are "beyond the terms of the order of 1 March 2019." See March 13, 2019 Letter at 3. To the contrary, the Court's Amended Case Management Order No. 19 demanded a "verified declaration of [Redacted]" addressing: "(1) the date of receipt of a copy of the Stipulated Protective Order and blank Certification; (2) the date of execution of the Certification pursuant to Paragraph 4; (3) the date of receipt of confidential information; (4) compliance with the Stipulated Protective Order by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information" pursuant to Paragraph 6 . . . ; (5) the date of destruction of confidential information in their custody or control; and (6) the date of confirmation of destruction of confidential information to Mr. Godkin[]." See Am. Case Management Order No. 19 ¶ 3. We understand that Mr. Godkin informed your client of this order on March 1, 2019. Your client consented to the Court's jurisdiction for purposes of enforcing the protective order, but now refuses to comply with the Court's orders. Please be advised that the Court today ordered that your client submit a declaration complying with Amended Case Management Order No. 19 by 5 p.m. Pacific time on March 14, 2019. A true and correct copy of that order, which requests "the declarations of . . . [Redacted] in compliance with Amended CM Order no. 19," is attached hereto as Exhibit A. Please comply.

We will submit to the Court your letters to us and our replies. We will take steps to redact your client's personal information from the public docket.

relevant here, that declaration states only that "Exhibit 4 is a true and correct copy of a document produced by Godkin & Klein, LLP, in this matter bearing Bates numbers GKLLP000200-GKLLP000201." See Abrahamson Decl. Supp. Def.'s Ex Parte Appl. ¶ 6 (Feb. 25, 2019).

March 13, 2019
Page 3

Very truly yours,



Sonal N. Mehta

SNM:za

cc: godkin@birnbaumgodkin.com
SERVICE-SIX4THREE@durietangri.com
JMurphy@MPBF.com
JLassart@MPBF.com
TMazzucco@MPBF.com
JLeveroni@MPBF.com
SBolotin@morrisonmahoney.com
LLombard@morrisonmahoney.com

EXHIBIT A

[REDACTED]

From: ComplexCivil <complexcivil@sanmateocourt.org>
Sent: Wednesday, March 13, 2019 11:35 AM
To: ComplexCivil; Stuart Gross; Benjamin Klein; David Godkin; James Kruzer; Josh Lerner; Sonal Mehta; Laura Miller; Catherine Kim; SERVICE-SIX4THREE; Jack Russo; Chris Sargent; Thomas Mazzucco; Joseph Leveroni; Donald P. Sullivan
Subject: RE: Six4Three v. Facebook (CIV533328) - Declarations Deadline

Correction: Thursday, March 14, 2019.

From: ComplexCivil
Sent: Wednesday, March 13, 2019 11:34 AM
To: ComplexCivil <complexcivil@sanmateocourt.org>; 'Stuart Gross' <sgross@grosskleinlaw.com>; 'Benjamin Klein' <bklein@grosskleinlaw.com>; 'David Godkin' <godkin@birnbaumgodkin.com>; 'James Kruzer' <kruzer@birnbaumgodkin.com>; 'JLerner@durietangri.com' <JLerner@durietangri.com>; 'Sonal Mehta' <SMehta@durietangri.com>; 'Laura Miller' <LMiller@durietangri.com>; 'CKim@durietangri.com' <CKim@durietangri.com>; 'SERVICE-SIX4THREE' <SERVICE-SIX4THREE@durietangri.com>; 'Jack Russo' <jrusso@computerlaw.com>; 'Chris Sargent' <csargent@computerlaw.com>; 'Thomas Mazzucco' <TMazzucco@MPBF.com>; 'Joseph Leveroni' <JLeveroni@MPBF.com>; 'Donald P. Sullivan' <Donald.Sullivan@wilsonelser.com>
Subject: Six4Three v. Facebook (CIV533328) - Declarations Deadline

At the hearing today, the Court further ordered the declarations of [REDACTED], [REDACTED], and [REDACTED] in compliance with Amended CM Order no. 19, issued on March 4, 2019.

These declarations shall be electronic served on all parties no later than Thursday, March 13, 2019 at 5 PM (PDT).



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Honorable Judge V. Raymond Swope
Superior Court of the State of California
County of San Mateo

14 March 2019

By email: complexcivil@sanmateocourt.org

Case No.: CIV533328

Our ref: RAN/32411

Dear Judge Swope

Redacted

We are instructed by the above named.

Our client is aware of an email from the court of 13 March 2019, directing him to file a declaration by 5pm PDT on 14 March 2019. We write to respectfully request the judge to revisit that order. The order places an onerous burden on our client, which would take significant costs and resources for him to comply with.

Such an order would also be disproportionate and unfair, in light of the facts and his position within the case. In summary, our client is not a party these proceedings. He is an independent expert. Further, Facebook's counsel have admitted to misleading the court in procuring the order of 1 March 2019. Facebook's counsel also refused to provide our correspondence to the court or to provide this firm with the relevant contact details for the court, so we may contact the court directly.

We rather received the contact details for the court from Mr Murphy, counsel for Mr Godkin, at 20:38 GMT on 13 March 2019. Our client is accordingly writing to the court directly, at the first opportunity, so the court can understand his position and the

concerning actions of the Defendants and their legal team in procuring the order of 1 March 2019. We address the background and our client's position in turn.

1. Background

The background to our client's involvement in these proceedings is outlined below. Where we have set out matters in further detail in the evidence and correspondence chain enclosed with this letter, we have referred the court to those letters / evidence. References are in square brackets (e.g. [XXX]).

i. Redacted background

Our client is not a party to this litigation. Rather, he was instructed as an expert to Mr Godkin and the Plaintiffs to these proceedings. His retainer is enclosed [007-008]. His instructions were to consider whether there were any wider public interest elements to the documents.

Redacted has a track record in such tasks. Redacted that led to the company becoming a notorious and household name. Indeed, without Redacted noting the wider public interest in Redacted, it is unlikely that the international media would have been picked up on the story at all.

Our client's international standing and reputation is detailed in our letter to the Defendants of 5 March 2019 [001-004].

ii. Redacted involvement in these proceedings

The background to his involvement in these proceedings are set out in our letter of 5 March 2019 [001-004]. In summary, when Redacted was instructed to assist with his insight into the wider public interest, he did so without any legal advice. He of course did not see the need for legal advice, given that he was acting as an independent expert. As an aside, the court should note that the Defendants' counsel have repeatedly suggested

to [Redacted] that he should now take legal counsel from Mr Godkin, despite the suggestion that Mr Godkin has breached the terms of the order [051].

As detailed in our letter of 5 March 2019, [Redacted] did not receive any advice on the terms of the Protective Order. We will not rehearse those details herein. Suffice to say that [Redacted] is not a lawyer and acted under instructions at all times.

iii. Awareness of CM Order 19

Our client was first alerted to CM Order no. 19 of 1 March 2019 by Mr Godkin on that same date. On consideration of that order, [Redacted] sensibly instructed this firm to seek independent advice on the terms of that order. He did so at his own cost (resulting in his expert involvement in these proceedings having cost him money, having never been paid by the Plaintiffs).

2. Correspondence with the Defendants

Having considered the order and the *ex parte* application that led it, [Redacted] instructed this firm to write to the Defendants' legal team to ascertain the basis for the application and the subsequent order. We enclose a copy of that correspondence chain and relevant exhibits, which serves to show:

1. The *ex parte* application was based on a material misrepresentation. The Defendants' application stated that [Redacted] said in an email that he was "willing to confirm details of Facebook's confidential information to reporters "anonymously"."¹ This was untrue. No such email exists. Despite some grammatical gymnastics by the Defendants in their letter of 13 March 2019 [057-059], they do not dispute that [Redacted] did not say these words.² Presenting

¹ The declaration of Mr Abrahamson of 25 February 2019, filed in support of the *ex parte* application of 25 February 2019, stated that "Gross & Klein produced a new e-mail sent by [Redacted], Six4Three's supposed "expert" willing to confirm details of Facebook's confidential information to reporters "anonymously" ... In that e-mail, sent mere days after Six4Three explained the expert scheme to [Redacted], [Redacted] told the nonprofit [Redacted] that he was "ready to join [a conference call] at that time if need be." See id.3 In other words, Six4Three's "experts" were not only willing to talk with reporters from The Guardian, but also to collaborate with other media and non-profit entities."

² The Defendants' submissions in their letter of 13 March 2019 do not stand scrutiny. In particular, the last sentence of the paragraph quoted at footnote 1 above refers expressly, in the last sentence, to "that e-mail" from [Redacted]. "That" email does not support what is said in the *ex parte* application, as that application relied on an affirmative statement from [Redacted] that he would "confirm

these words as coming from [Redacted] was misleading and a material misrepresentation. That was the only evidence against our client in the *ex parte* application.

2. The Defendants refused to provide the complete chain of correspondence to the court or to provide [Redacted] with the contact details for the court [047-051].
3. We also understand that in oral submissions before the court on 13 March 2019, the Defendants did not refer to our correspondence, compounding the initial misrepresentation.

Our client is concerned that the Defendants have procured the order of 1 March 2019 by way of a material misrepresentation. Further, despite our client's best endeavours, the Defendants have not alerted the court to the misrepresentation, compounding the unfairness to our client. As explored below, the necessity of such an order, coupled with the cost to our client, is such for our client to respectfully request the court to reconsider the order.

3. Necessity of a declaration from [Redacted]

Despite our client seeking the assistance of the Defendants to contact the court, they have regrettably failed to engage with our client in a cooperative manner. Rather, they have approached this correspondence as hostile litigation between themselves and [Redacted], making their lack of independence for the need for an order abundantly clear.

To that end, we respectfully ask the court to review the need for our client to provide a declaration mindful of the following facts³:

1. The order was procured on the basis of wilful misrepresentation by the Defendants, portraying our client as having stated that he would be willing to breach the Protective Order where no such evidence in fact exists. Rather, there

details of Facebook's confidential information to reporters "anonymously". This was simply not true and the evidence did not bear this out. No amount of wriggling by the Defendants can get them out of this simple fact – they had misled the court.

³ These facts are dealt with in detail in our letters to the Defendants lawyers as enclosed with this letter.

is no evidence that our client was willing to breach the terms of the order or that he has breached the terms of the order.

2. There was no need for the Defendants to make an application on an *ex parte* basis. They could have reached out to our client before making the application. They did not do so, in order to leverage the court against him. This is demonstrated by the subsequent requests to our client went way beyond the terms of the 1 March 2018 order or the Protective Order. Regrettably, they went so far as to mislead the court to get that order.
3. The purpose of the order was to identify and prevent further leaks of the confidential and highly confidential information. The Defendants own case is that they do know who breached the order. In our letters of 5 and 7 March 2019 **[001-004]** and **[039 – 046]**, he also confirmed to the Defendants that he was in no way involved in the issues in their *ex parte* application. Our client also deleted the information as requested by Mr Godkin, so there is no prospect of him leaking the information.
4. The order requires our client to explain his compliance with the order by not "revealing] or discuss[ing] confidential information to or with any person who is not entitled to receive such information". This is not a simple task. In particular:
 - a. As above, our client has not received any assistance with understanding the terms of the order. He was reliant on those instructed him to appreciate the order and always acted on their instruction. The Plaintiffs and Mr Godkin are said to have breached the order. He does not wish to mislead the court in any way, in contrast to the regrettable conduct of those that have instructed him and the Defendants.
 - b. As such, in order to ensure that he is able to deal with this fully, he sought the Defendants to explain why they believe that he had breached the order. No explanation has been provided, other than reliance on the words and actions of third parties. At most, the Defendants' evidence suggests

that our client emailed a chain to say he was willing to join a call *if needed*. He did so purely in his expert instruction, to explain that there was a public interest in the documents. He did not need to discuss the documents directly to explain their public importance.⁴ There is also no evidence that he in fact joined the call. His records confirm that he did not. He is therefore none the wiser as to why it is said that he has not complied.

- c. It is also not clear exactly which information the court considers “confidential or highly confidential” information. For instance, it is not clear if all the case summaries he received were covered by the Protective Order. He understood that one was not. He further understands that there is a live question about the status of these “case summary” documents before the court. He will have to get guidance on these matters, then consider his background involvement in the case.
- d. [Redacted] is also unclear about the extent to which he is said to have breached the other terms of the Protective Order. As far as he can understand, the Protective Order subsists between the Plaintiffs and the Defendants. Nevertheless, the Defendants have accused [Redacted] of breaching the wider terms of the Protective Order by for example not providing a list of former employers to the Defendants. It is not clear to us that the Protective Order entitles the Defendants to such information and when asked to explain, no explanation was forthcoming. Nevertheless, this example shows to serve the wider issues faced by [Redacted] by the order.
- e. [Redacted] would nevertheless be prepared to sift through the entire history of his involvement in the case (so far as such records exists) to certify what he has or has not done. He has deleted a large portion of information at the direction of Mr Godkin, which makes any such undertaking difficult.

⁴ The documents are of public interest, as shown by the actions (and reaction) of the British DCMS Committee of Parliament.

- f. On any consideration, this is a vast undertaking that he will have to do at his own cost. He will also have to pay for legal advice, both in this jurisdiction and in the US.
5. It is also not clear to our client what jurisdiction the Defendants have to seek these orders. As per the terms of CM Order 19, the order subsists against the Plaintiffs rather than to **Redacted** directly.
6. He is also conscious of legal privilege and requires advice to this end.

Despite these matters, **Redacted** is nevertheless seeking to assist the court as far as he can. He has provided documents and explanations to the Defendants, with a view to them providing this information to the court. He has however been hampered by the conduct and the uncooperative attitude of the Defendants.

Considering that (1) the Defendants *ex parte* application was based on material misrepresentation (2) that the purpose of the application is met by other means and (3) the cost and time it would take **Redacted** to comply, our client respectfully asks the court to reconsider the need for such a declaration from our client. It is plain that such a declaration is burdensome and would be unfair to our client.

Should the court nevertheless decide that **Redacted** is still required to provide such a declaration, our client will review his position at that stage. However, for reasons detailed above, such a declaration will take time and cannot be produced within 24 hours. We trust that the court will in any event understand the predicament faced by our client and release him from the need to provide such a declaration.

Should the court have any queries in respect of this matter, please contact Mr Ravi Naik of our offices.

Yours sincerely

Irvine Thanvi Natas Solicitors

EXHIBIT 2

FILED
SAN MATEO COUNTY

MAR 01 2019

By  **Clerk of the Superior Court**
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE LLC,

Plaintiff,

vs.

FACEBOOK, INC., et al.

Defendants.

Case No. CIV533328

CASE MANAGEMENT ORDER NO. 19

Assigned for All Purposes to
Hon. V. Raymond Swope, Dept. 23

Dept.: 23

Action Filed: April 10, 2015

On February 27, 2019, the Court set a briefing schedule on Defendant FACEBOOK, INC.'s ("Facebook") Ex Parte Application for an Order Enforcing the Stipulated Protective Order ("Facebook's Ex Parte" or "Ex Parte").

Having considered Facebook's Ex Parte, filed on February 27, 2018, and the respective responses of: (1) David S. Godkin, James Kruzer, and Birnbaum & Godkin, LLP ("Godkin Response"); (2) Gross & Klein, LLP and Stuart G. Gross ("Gross Response"); and (3) Theodore Kramer and Thomas Scaramellino (Kramer Response") and good cause appears.

IT IS HEREBY ORDERED as follows:

1. Facebook's Ex Parte is GRANTED, IN PART, AND DENIED, IN PART. As a threshold matter, the Court finds the Application is not a request for reconsideration. (See Kramer Response, p. 3:11-21.) The Ex Parte involves new disclosures of confidential or highly confidential information ("confidential information") subject to the Stipulated Protective Order, issued on October 25, 2016, published on the Internet outside of publication by the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMS"). (Abrahamson Dec. ISO Ex Parte, Ex.

4, 5. See Ex Parte, p. 1:8-14.)

2 Pursuant to Paragraph 4 of the Stipulated Protective Order,¹ Plaintiff SIX4THREE,
3 LLC ("Six4Three"), through its counsel of record, shall produce fully executed Certifications of all
4 consultants or expert witnesses (Paragraph 4(e)), whether eventually retained or not, and all
5 witnesses (Paragraph 4(g)) **no later than March 5, 2019 at 5:00 p.m.** This shall include the persons
6 identified by Six4Three, including but not limited to, Thomas E. Scaramellino, who has repeatedly
7 stated his role as a law clerk was not as an employee of Birnbaum & Godkin, LLP, Paul Dehaye
8 (Godkin Dec. ISO Godkin Response, ¶ 2 ("Godkin Dec."), and an unidentified retained consultant
9 (*id.* at ¶ 4).

10 3. Mr. Godkin has referred to his communications with Mr. Dehaye and an unidentified
11 retained consultant and their actions pertaining to the Stipulated Protective Order and confidential
12 information. (Godkin Dec., ¶¶ 2 – 4.) Accordingly, Six4Three shall serve, **no later than March 5,**
13 **2019 at 5:00 p.m.,** the verified declarations of Mr. Dehaye and the unidentified retained consultant
14 where they shall state and address: (1) the date of receipt of a copy of the Stipulated Protective Order
15 and blank Certification; (2) the date of execution of the Certification pursuant to Paragraph 4; (3)
16 the date of receipt of confidential information; (4) compliance with the Stipulated Protective Order
17 by "not reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled
18 to receive such information "pursuant to Paragraph 6 (see Godkin Dec., ¶ 5); (5) the date of
19 destruction of confidential information in their custody or control; and (6) the date of confirmation
20 of destruction of confidential information to Mr. Godkin (see *id.* at ¶¶ 3 , 4).

21 4. Mr. Godkin states that his firm "only provided third parties with Facebook's
22 confidential or highly confidential information in conformance with the Protective Order." (Godkin
23 Dec., p. 3:6-7.) The Court finds this statement ambiguous. Mr. Godkin shall serve a declaration
24 clarifying his or any person's, whether employed, consulted, retained, volunteered, affiliated or
25 associated with Birnbaum & Godkin, LLP, compliance with Paragraph 6 by "not reveal[ing] or
26 discuss[ing] confidential information to or with any person who is not entitled to receive such

¹ All further citations to "Paragraph" refer to the paragraphs of the Stipulated Protective Order.

information" **no later than March 5, 2019 at 5:00 p.m.**

5. The Court finds that the recent publication of confidential information made outside of DCMS publication outweighs Mr. Kramer's privacy interests. Further inquiry into what confidential information Mr. Kramer shared with the DCMS compared to what has been published outside of the DCMS is necessary to preserve the sanctity of the Stipulated Protective Order.

Accordingly, Stroz Friedberg, LLC, ("Stroz Friedberg") shall conduct a search on Mr. Kramer's computer, currently in its possession, for any and all logs and records, not limited to systems logs, that will identify any files accessed, opened, uploaded, downloaded, transferred, shared, saved, modified, and/or deleted, for the period from November 19, 2108 at 12:00:00 A.M. (GMT) to November 23, 2018 at 11:59:59 P.M (EST). **Stroz Friedberg shall not open any files on Mr. Kramer's computer absent further of the Court.**

This search is narrowly tailored to the dates from when Mr. Kramer traveled to London and was in communication with DCMS to the date of his stated deletion of confidential information in New York. (See Kramer Dec ISO Six4Three Brief, filed Nov. 26, 2018, ¶¶ 11 – 24.) The Court acknowledges Mr. Kramer's objection to Stroz Friedberg because of their retention by Facebook. However, Kramer has failed to demonstrate that Stroz Friedberg has not complied with the Court's prior orders.

Time is of the essence, given the continuing disclosure of confidential information outside of DCMS publication. Moreover, as previously represented, Six4Three is bereft of funds to retain a joint forensic examiner for the purposes of this inquiry. Thus, any forensic examiner would solely be funded by Facebook.

Stroz Friedberg shall serve on counsel of record a written summary and attach the logs and records promptly upon completion. The Court considers this report confidential information under the protective order and should be treated as such.

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1 6. Facebook's Motion to Open Discovery shall remain on March 15, 2018 at 10:00
2 a.m.

3 7. The Court, *sua sponte*, continues the Case Management Conference from March 7,
4 2019 to March 15, 2019 at 10:00 a.m.

5
6 IT IS SO ORDERED.

7
8 DATED: March 1, 2019

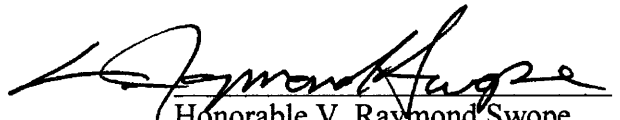
9
10 
11 Honorable V. Raymond Swope
12 Judge of the Superior Court
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EXHIBIT 3

ON 3/18/2019

By /s/ Marcela Enriquez
Deputy Clerk

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8 Attorneys for Plaintiff's Counsel

David S. Godkin (admitted *pro hac vice*)

9 James E. Kruzer (admitted *pro hac vice*)

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14
15 SUPERIOR COURT OF CALIFORNIA

16 COUNTY OF SAN MATEO

17 SIX4THREE, LLC, a Delaware limited
18 liability company;

19 Plaintiff,

20 v.

21 FACEBOOK, INC., a Delaware
22 corporation;
23 MARK ZUCKERBERG, an individual;
24 CHRISTOPHER COX, an individual;
25 JAVIER OLIVAN, an individual;
26 SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
27 ILYA SUKHAR, an individual; and
DOES 1 through 50, inclusive,

28 Defendants.

Case No. CIV 533328

Assigned For All Purposes To
Hon. V. Raymond Swope, Department 23

**DECLARATION OF DAVID S. GODKIN IN
RESPONSE TO CMO NO. 19
REDACTED FOR PUBLIC FILING**

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

1 I, David S. Godkin, declare:

2 1. I am a partner at the law firm of Birnbaum & Godkin, LLP, counsel of record for
3 Plaintiff Six4Three, I.L.C. ("643") in this case. I make this Declaration from personal
4 knowledge, and if called to testify, I could and would competently testify thereto.

5 2. Case Management Order no. 19, ¶4 directs that I serve a declaration "clarifying
6 his or any person's, whether employed, consulted, retained, volunteered, affiliated or associated
7 with Birnbaum & Godkin, LLP, compliance with Paragraph 6 [of the Protective Order] by 'not
8 reveal[ing] or discuss[ing] confidential information to or with any person who is not entitled to
9 receive such information.'" This declaration is being served pursuant to that Order.

10 3. My firm has stored and maintained Facebook's confidential information on a
11 password-protected document hosting platform (Redacted) and on the firm's secure server.

12 4. Only firm employees have access to the firm's secure server.

13 5. Thomas Scaramellino assisted with the litigation as an outside member of the
14 legal team. He was not given access to the firm's secure server. Mr. Scaramellino reviewed the
15 Stipulated Protective Order and blank certification. He then executed the Protective Order
16 certification on December 1, 2016. A copy of Mr. Scaramellino's executed certification is
17 attached hereto as Exhibit A. Because Mr. Scaramellino was not employed by the firm, and
18 was an investor in Six4Three, I required that he execute the Protective Order certification before
19 giving him access to Facebook's confidential information. Initially Mr. Scaramellino was given
20 access to Facebook's confidential documents but not highly confidential documents. Therefore,
21 Mr. Scaramellino struck out "Highly Confidential Information" on the certification that he
22 executed. After he executed the certification, Mr. Scaramellino was given access to the
23 confidential files on the document hosting platform. As the litigation progressed, I required Mr.
24 Scaramellino's assistance with preparation of deposition outlines and pleadings that included
25 Facebook's highly confidential documents as well as confidential documents. In addition, the
26 Court had placed no restrictions on Mr. Scaramellino's involvement as a member of the legal
27 team. I therefore permitted Mr. Scaramellino to access Facebook's highly confidential
28

1 documents. Mr. Scaramellino understood that strict compliance with the Protective Order was
2 required.

3 6. From time to time, I determined that it was necessary for the prosecution of the
4 litigation to share Facebook's confidential information with Six4Three's Managing Director,
5 Ted Kramer, and therefore my firm and the legal team disclosed Facebook confidential
6 information to him. However, all members of the legal team dealing with Mr. Kramer
7 understood that he could not have access to highly confidential information. As an officer of a
8 party to the litigation, Mr. Kramer was not required to execute the Protective Order certification.

9 7. My firm engaged [Redacted] on January 6, 2017 to review Facebook's
10 documents to assist us in identifying potential deposition and trial witnesses. We provided the
11 Stipulated Protective Order and blank certification to [Redacted] on January 6, 2017, and she
12 executed the certification on the same date. A copy of [Redacted] executed certification is
13 attached hereto as Exhibit B. After she executed the certification, [Redacted] was granted access
14 to Facebook's confidential and highly confidential information. [Redacted] was granted access
15 to the Relativity document hosting platform. [Redacted] has affirmed that she revealed and
16 discussed Facebook's confidential and highly confidential information only with me, Mr.
17 Kruzer, and Mr. Scaramellino. She has affirmed that she stored and maintained Facebook's
18 confidential and highly confidential information in a secure location. I terminated [Redacted]
19 engagement with my firm in early January, 2019, and asked her to return or destroy all of
20 Facebook's confidential and highly confidential information. On January 24, 2019, [Redacted]
21 confirmed to me that she had returned and destroyed all of Facebook's confidential and highly
22 confidential information between January 4, 2019 and January 24, 2019. A copy of [Redacted]
23 declaration ordered in Case Management Order No. 19 is attached hereto as Exhibit C.

24 8. My firm engaged [Redacted] to assist the legal team with analysis of
25 Facebook's privilege logs. [Redacted] was provided the Stipulated Protective Order and blank
26 certification in early August, 2017, and he executed the certification on August 4, 2017. A copy
27 of [Redacted] executed certification is attached hereto as Exhibit D. My firm did not provide
28

1 [Redacted] with any Facebook confidential or highly confidential information. To the best of
2 my knowledge, the only member of Six4Three's legal team who communicated with [Redacted]
3 [Redacted] Mr. Scaramellino, and [Redacted] involvement was limited to the analysis of
4 Facebook's privilege logs.

5 9. My firm engaged [Redacted] to assist us in reviewing Facebook's
6 arguments related to digital privacy issues. We provided a copy of the Stipulated Protective
7 Order and blank certification to [Redacted] on May 10, 2018. He executed the certification on
8 May 14, 2018. A copy of [Redacted] executed certification is attached hereto as Exhibit E.
9 My firm provided Facebook confidential and highly confidential information to him in May and
10 June, 2018, after he executed the certification. I terminated my firm's engagement with [Redacted]
11 [Redacted] in early January, 2019, and directed him to return or destroy all Facebook confidential
12 information that he had in his possession, including all documents referring to Facebook's
13 confidential documents, and to confirm that he had done so. On January 11, 2019, [Redacted]
14 confirmed in writing that he had deleted all of Facebook's documents, and asked if he should
15 also destroy reports and filings referring to Facebook's confidential information. In response, I
16 instructed him to destroy everything referring to Facebook's confidential information.

17 10. I am not able to comply with ¶3 of Case Management Order No. 19 directing
18 Six4Three to serve a verified declaration of Mr. Dehaye despite good faith efforts to do so, as
19 follows. As set forth above, I terminated my firm's engagement with [Redacted] in January,
20 2019, so he has no current relationship with my firm. On March 1, 2019, after receiving Case
21 Management Order No. 19, I informed [Redacted] by email that the Court had ordered him to
22 provide a verified declaration by March 5, 2019. I sent him a draft declaration on March 3,
23 2019 for his review. Later in the day on March 4, 2019, I received an email from Mr. Ravi
24 Naik, an attorney with a London law firm Irvine, Thanvi, Natas Solicitors, informing me that his
25 firm has been instructed by [Redacted], and asking me to provide Case Management Order no.
26 19 to him. I sent the Order and my February 28, 2019 declaration to Mr. Naik shortly
27 thereafter. On March 4, 2019, Mr. Naik sent another email asking me to provide Facebook's ex
28

1 *parte* application and any related documents. I sent him Facebook's application and other
2 papers submitted regarding Facebook's application shortly thereafter. Having no response from
3 Mr. Naik or [Redacted], I emailed Mr. Naik again this morning asking him whether [Redacted]
4 [Redacted] would provide a declaration in compliance with the Order. As of the time I executed
5 this Declaration, I have not received a declaration of [Redacted]. I did, however, receive
6 correspondence sent from Mr. Naik to Facebook's counsel, Ms. Mehta, at 2:42 p.m. EST today,
7 which I have attached as Exhibit F. Mr. Naik's letter to Ms. Mehta confirms that [Redacted]
8 deleted all Facebook confidential and highly confidential documents he was provided including
9 internal case summaries.

10 11. Case Management Order no. 19, ¶2 directs me to produce fully executed
11 Certifications of witnesses. I believe that Ali Partovi, a deposition witness, executed the
12 Protective Order certification during a break at his deposition on October 10, 2017. I have been
13 unable to locate a copy of a certification that he executed, and therefore I have not been able to
14 produce it.

15 12. To the best of my knowledge, the individuals identified above are the only
16 persons to whom my firm provided Facebook's confidential and highly confidential
17 information, and such information was provided in conformance with the Protective Order. At
18 no time did my firm direct, authorize, condone, or otherwise sanction the release, disclosure, or
19 commentary by Mr. Kramer, Mr. Scaramellino, experts and consultants of any confidential or
20 highly confidential information to any third party. Other than the disclosure of Facebook
21 information to the DCMS Committee by Mr. Kramer in November 2018, I am not aware of any
22 such activity.

23 I declare under the penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct.

25 Executed March 5, 2019 at Boston, Massachusetts.

26 
27 David S. Godkin
28

EXHIBIT A

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information ~~or Highly Confidential Information~~ to anyone, except as allowed by the Order. I will maintain all such Confidential Information ~~or Highly Confidential Information~~, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information ~~or Highly Confidential Information~~, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information ~~or Highly Confidential Information~~. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Pthenakis located at the address of 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 1st day of December, 2016, at 9:00AM.

By: [Redacted]

Address: [RedactedRedacted]

[Redacted]

Phone: [Redacted]

-15-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

EXHIBIT B

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Fthenakis of Criterion Law located at the address of 2225 E. Bayshore Road, Palo Alto CA 94303 as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 6 day of January, 2017, at 4:30pm.

By: **Redacted**

Address: **Redacted**

Redacted

Phone: **Redacted**

EXHIBIT C

1 James A. Murphy – 062223

JMurphy@mpbf.com

2 James A. Lassart – 40913

JLassart@mpbf.com

3 Joseph S. Leveroni – 304721

JLeveroni@mpbf.com

4 MURPHY, PEARSON, BRADLEY & FEENEY

88 Kearny Street, 10th Floor

5 San Francisco, CA 94108-5530

Telephone: (415) 788-1900

6 Facsimile: (415) 393-8087

7 Attorneys for Plaintiff's Counsel

David S. Godkin (admitted *pro hac vice*)

8 James E. Kruzer (admitted *pro hac vice*)

Birnbaum & Godkin, LLP

9 280 Summer Street

Boston, MA 02210

10 Telephone: (617) 307-6100

Facsimile: (617) 307-6101

11 godkin@birnbaumgodkin.com

kruzer@birnbaumgodkin.com

13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
liability company;

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
corporation;

19 MARK ZUCKERBERG, an individual;

20 CHRISTOPHER COX, an individual;

21 JAVIER OLIVAN, an individual;

SAMUEL LESSIN, an individual;

22 MICHAEL VERNAL, an individual;

ILYA SUKHAR, an individual; and

23 DOES 1 through 50, inclusive,

24 Defendants.

Case No. CIV 533328

Assigned For All Purposes To

Hon. V. Raymond Swope, Department 23

DECLARATION OF Redacted

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

1 I, [Redacted], declare:

2 1. I am over the age of 18. I make the following statements in response to Case
3 Management Order No. 19, ¶3. I make this Declaration from personal knowledge, and if called to
4 testify, I could and would competently testify thereto.

5 2. I received a copy of the Stipulated Protective Order and blank certification in this action
6 on January 6, 2017.

7 3. I executed the certification on January 6, 2017.

8 4. I was able to access Facebook's confidential and highly confidential information after I
9 executed the certification on January 6, 2017.

10 5. I have not revealed Facebook's confidential or highly confidential information to
11 anyone other than Six4Three's counsel (David S. Godkin and James Kruzer) and Thomas
12 Scaramellino, who I understood was working with Mr. Godkin's firm as part of Six4Three's legal
13 team. I have not discussed Facebook's confidential or highly confidential information with anyone
14 other than Six4Three's counsel and Mr. Scaramellino. As used herein, "Facebook's confidential or
15 highly confidential information" includes all information copied or extracted from or reflecting the
16 confidential or highly confidential information, all copies, excerpts, summaries or compilations of
17 confidential or highly confidential information, and any testimony, conversations or presentations by
18 parties or their counsel that might reveal confidential or highly confidential information. I stored and
19 maintained Facebook's confidential and highly confidential information in a secure location.

20 6. I returned to Mr. Godkin's firm and destroyed all Facebook confidential and highly
21 confidential information in my custody or control between January 4, 2019 and January 24, 2019.

22 7. I confirmed to Mr. Godkin my return and destruction of all Facebook confidential and
23 highly confidential information on January 24, 2019. I no longer have access to any Facebook
24 confidential and highly confidential information.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct.

3 Executed March 4, 2019 at Redacted
4

5 Redacted
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EXHIBIT D

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Basil P. Fthenakis located at the address of 2225 E. Bayshore Road, Suite 200, Palo Alto as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 4 day of August, 2016, at 16:11 EST.

By: [Redacted]
Address: [Redacted]
Phone: [Redacted]

-15-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

EXHIBIT E

CERTIFICATION

I hereby certify my understanding that Confidential Information or Highly Confidential Information is being provided to me pursuant to the terms and restrictions of the Stipulation and Protective Order Regarding Confidential Information filed on October 25, 2016, in *Six4Three, LLC v. Facebook, Inc.*, San Mateo County Superior Court Case No. CIV533328 ("Order"). I have been given a copy of that Order and read it.

I agree to be bound by the Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I will not reveal the Confidential Information or Highly Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information or Highly Confidential Information, including copies, notes, or other transcriptions made therefrom, to the counsel who provided me with the Confidential Information or Highly Confidential Information. I hereby consent to the jurisdiction of the San Mateo County Superior Court for the purpose of enforcing the Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint Stuart G. Gross of Klein & Gross LLP located at the address of The Embarcadero, Pier 9, Suite 100, SF, CA 94111 as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this 14th day of May 2018 ~~XXXX~~ at Redacted

Redacted

Redacted

Address: Redacted

Redacted

Phone: Redacted

-15-

STIPULATED [PROPOSED] PROTECTIVE ORDER
CASE NO. CIV533328

EXHIBIT F

REDACTED FOR PUBLIC FILING

CERTIFICATE OF SERVICE

I, Jennifer Cuellar, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108.

On March 18, 2019, I served the following document(s) on the parties in the within action:

DECLARATION OF DAVID S. GODKIN IN RESPONSE TO CMO NO. 19 REDACTED FOR PUBLIC FILING

SUPPLEMENTAL DECLARATION OF DAVID S. GODKIN IN RESPONSE TO CMO NO. 19 REDACTED FOR PUBLIC FILING

DECLARATION OF REDACTED, REDACTED FOR PUBLIC FILING

X

VIA MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as listed below.

Six4Three, LLC
1267 Chestnut Street, Apt. 6
San Francisco, CA 94109

Six4Three, LLC
2098 8th Avenue, 51
New York, NY 10026

Superior Court of California County of San Mateo
Department 23
400 County Center
Redwood City, CA 94063

X

VIA E-MAIL: I attached the above-described document(s) to an e-mail message, and invoked the send command at approximately _____ AM/PM to transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My email address is jcuellar@mpbf.com

Computer Law Group, LLP
401 Florence Street
Palo Alto, CA 94301
Email: jrusso@computerlaw.com
csargent@computerlaw.com

Attorneys for Theodore Kramer and Thomas Scaramellino

Theodore Kramer
Email: Theodore.kramer@protonmail.com

1 Donald P. Sullivan
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4 San Francisco, CA 94105
5 Donald.sullivan@wilsonelser.com

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6 Steven J. Bolotin
7 MORRISON MAHONEY LLP
8 250 Summer Street
9 Boston, MA 02210
10 sbolotin@morrisonmahoney.com

Attorney for Birnbaum & Godkin LLP

11 Joshua H. Lerner - jlerner@durietangri.com
12 Sonal N. Mehta - SMehta@durietangri.com
13 Laura Miller - LMiller@durietangri.com
14 Catherine Kim - ckim@durietangri.com
15 Durie Tangri
16 217 Leidesdorff Street
17 San Francisco, CA 94111
18 Email: SERVICE-SIX4THREE@durietangri.com

Attorneys for Facebook, Inc.

19 I declare under penalty of perjury under the laws of the State of California that the foregoing is
20 a true and correct statement and that this Certificate was executed on March 18, 2019.

21 By 
22 Jennifer Cuellar

EXHIBIT 4

FILED
SAN MATEO COUNTY

FEB 28 2019

Clerk of the Superior Court

By: 

1 James A. Murphy – 062223
JMurphy@mpbf.com
2 James A. Lassart – 40913
JLassart@mpbf.com
3 Joseph S. Leveroni – 304721
JLeveroni@mpbf.com
4 MURPHY, PEARSON, BRADLEY & FEENEY
88 Kearny Street, 10th Floor
5 San Francisco, CA 94108-5530
Telephone: (415) 788-1900
6 Facsimile: (415) 393-8087

7 Attorneys for Plaintiff's Counsel
David S. Godkin (admitted *pro hac vice*)
8 James E. Kruzer (admitted *pro hac vice*)
Birnbaum & Godkin, LLP
9 280 Summer Street
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10 Telephone: (617) 307-6100
Facsimile: (617) 307-6101
11 godkin@birnbaumgodkin.com
kruzer@birnbaumgodkin.com

12
13 SUPERIOR COURT OF CALIFORNIA

14 COUNTY OF SAN MATEO

15 SIX4THREE, LLC, a Delaware limited
liability company;

16 Plaintiff,

17 v.

18 FACEBOOK, INC., a Delaware
19 corporation;
20 MARK ZUCKERBERG, an individual;
21 CHRISTOPHER COX, an individual;
22 JAVIER OLIVAN, an individual;
23 SAMUEL LESSIN, an individual;
24 MICHAEL VERNAL, an individual;
25 ILYA SUKHAR, an individual; and
26 DOES 1 through 50, inclusive,

27 Defendants.
28

Case No. CIV 533328

Assigned For All Purposes To
Hon. V. Raymond Swope, Department 23

**DECLARATION OF DAVID S. GODKIN IN
SUPPORT OF RESPONSE OF DAVID S.
GODKIN, JAMES E. KRUZER AND
BIRNBAUM & GODKIN, LLP TO
DEFENDANT'S EX PARTE APPLICATION
FOR AN ORDER ENFORCING THE
STIPULATED PROTECTIVE ORDER**

Hearing:

Time

Department: 23

Judge: Honorable V. Raymond Swope

Filing Date: April 10, 2015

Trial Date: April 25, 2019

CIV533328
DIR
Declaration in Reply
1678777



1 I, David S. Godkin, declare:

2 1. I am a partner at the law firm of Birnbaum & Godkin, LLP ("B&G"), counsel of record
3 for Plaintiff Six4Three, LLC ("643") in this case. I make this Declaration from personal knowledge,
4 and if called to testify, I could and would competently testify thereto.

5 2. My firm retained two expert consultants to assist us with the litigation. One was Paul
6 Dehaye, who is a well-known expert in digital privacy issues and qualified to provide expert opinions
7 and analysis of such issues. Mr. Dehaye's assistance was required to rebut Facebook's arguments that
8 its actions that forced 643 out of business were undertaken in the interests of protecting the privacy
9 interests of Facebook's users. Mr. Dehaye executed the Certification required by this Court's
10 Protective Order before he was provided with any of Facebook's confidential or highly confidential
11 documents. By executing the Certification, Mr. Dehaye certified his understanding that Facebook's
12 confidential and highly confidential information was provided to him pursuant to the terms and
13 restrictions of the Protective Order. He certified that he had been given a copy of the Protective Order
14 and that he had read it. He agreed to be bound by the Protective Order and certified that he understood
15 and acknowledged that a failure to comply could expose him to sanctions and punishment in the nature
16 of contempt. He agreed not to reveal Facebook's confidential or highly confidential information to
17 anyone, except as allowed by the Protective Order. He agreed to maintain all such information in a
18 secure manner to prevent unauthorized access to it.

19 3. In early January 2019, I informed Mr. Dehaye that my firm was not able to continue to
20 represent 643 and that 643 was in the process of seeking to engage new counsel. I informed him that
21 because my firm was withdrawing as counsel, my firm was terminating its engagement with him
22 pursuant to our engagement letter with him. I also informed him that he would continue to be bound
23 by the Protective Order. Finally, I directed Mr. Dehaye to return or destroy all Facebook confidential
24 information that he had in his possession, including all documents referring to Facebook's confidential
25 documents, and to confirm that he had done so. In response, on January 11, 2019, Mr. Dehaye
26 confirmed that he had deleted all of Facebook's documents.

27

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4. My firm also retained a consultant to review Facebook's highly confidential documents to assist us in identifying potential deposition and trial witnesses. This consultant also signed the Protective Order Certification before we provided her with any Facebook documents. As with Mr. Dehaye, I terminated my firm's engagement with the consultant in early January 2019, and the consultant confirmed that all Facebook documents were returned to my firm or destroyed.

5. As set forth above, B&G only provided third parties with Facebook's confidential or highly confidential information in conformance with the Protective Order. At no time did B&G direct, authorize, condone, or otherwise sanction the release, disclosure, or commentary by experts and consultants of any confidential or highly confidential information to any third party, nor is it aware of any such activity.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed February 28, 2019 at Boston, Massachusetts.


David S. Godkin

EXHIBIT 5

DURIE TANGRI LLP
SONAL N. MEHTA (SBN 222086)
smehta@durietangri.com
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217 Leidesdorff Street
San Francisco, CA 94111
Telephone: 415-362-6666
Facsimile: 415-236-6300

Attorneys for Defendants
Facebook, Inc., Mark Zuckerberg, Christopher Cox, Javier
Olivan, Samuel Lessin, Michael Vernal, and Ilya Sukhar

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

**Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23**

**DEFENDANT FACEBOOK, INC.'S EX
PARTE APPLICATION FOR AN ORDER
ENFORCING THE STIPULATED
PROTECTIVE ORDER**

Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

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1 Defendant Facebook, Inc. ("Facebook") files this *ex parte* application for an order enforcing the
2 Stipulated Protective Order.

3 Facebook provided notice of this application to Plaintiff Six4Three, LLC ("Six4Three") via e-
4 mail on February 25, 2019.

5 This application is based upon the memorandum of points and authorities, the declaration of
6 Zachary G. F. Abrahamson, and such additional evidence and argument as may be presented at or before
7 any hearing on this matter.

8
9 Dated: February 25, 2019

DURIE TANGRI LLP

10
11 By: _____



SONAL N. MEHTA

JOSHUA H. LERNER

LAURA E. MILLER

CATHERINE Y. KIM

ZACHARY G. F. ABRAHAMSON

14 Attorneys for Defendants

15 Facebook, Inc., Mark Zuckerberg, Christopher Cox,
16 Javier Olivan, Samuel Lessin, Michael Vernal, and Ilya
17 Sukhar
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1 **I. INTRODUCTION**

2 This Court cannot continue to wait for answers about Six4Three’s violations of multiple court
3 orders or to take necessary steps to stop further leaks of protected and sealed Facebook information.

4 On February 19, 2019, the DCMS Committee released another batch of Facebook confidential
5 information that had been improperly leaked to it by Six4Three. That same day, Six4Three published a
6 fundraising plea that sought to leverage the same confidential and highly confidential documents that Ted
7 Kramer improperly disclosed to the DCMS Committee to fund its crusade, yet another disclosure of
8 protected information in violation of this Court’s protective order. Then, three days later, **another** 66
9 pages of Facebook’s confidential information—all taken from the leaked Godkin declaration in support
10 of Six4Three’s opposition to the individual defendants’ anti-SLAPP motion—somehow leaked to an
11 online file-sharing site that lacks any apparent connection to the DCMS Committee but instead appears to
12 be connected to individuals that Six4Three has been working with. And **just yesterday**, even more
13 confidential documents from the Godkin declaration—and portions of the declaration itself—were posted
14 to that same online file-sharing site.

15 The leaks proliferate, but proceedings to investigate and address them are at a standstill. Three
16 months have passed since Mr. Kramer handed Damian Collins a thumb drive in violation of multiple
17 Court orders, but most of what the Court and Facebook know about the scope of that violation is what is
18 printed in *The Guardian* or posted online by people that received the material improperly. Beyond that,
19 Facebook has received only very narrow discovery into third-party communications that this Court
20 ordered Six4Three’s counsel to produce in December. Even that discovery continues to produce fresh
21 revelations about Six4Three’s campaign to use this litigation as a vehicle to expose Facebook’s
22 confidential information. Those documents (including documents from Six4Three’s lawyers at Gross &
23 Klein LLP that should have been produced on January 8, but were not turned over until over a month
24 later, after Facebook repeatedly raised questions as to Gross & Klein’s compliance with the Court’s
25 orders) confirm that Six4Three and its legal team initiated a scheme to inject confidential information
26 into the public domain through third-party “experts,” who are individuals working with the media and
27 not “expert” on any issue in the case at all. At least one of these purported “experts” appears to be
28 connected to the latest leak, completely apart from the DCMS Committee’s disclosures.

1 These revelations require that the Court take *immediate* steps to *put an end* to the continued
2 leaking of Facebook’s confidential and highly confidential information and to determine what documents
3 were disclosed to third parties and the DCMS Committee. Facebook requests that the Court (1) require
4 Six4Three to produce its expert certifications pursuant to Paragraph 4 of the protective order (or, in the
5 alternative, to identify *in camera* any “experts” or “consultants” (or other third parties) to whom
6 Six4Three disclosed Facebook’s confidential or highly confidential information) and certify to the Court
7 that those third parties have destroyed any discovery material received from Six4Three; and (2) permit
8 the forensic examiner to conduct a limited analysis of the data associated with Mr. Kramer’s devices and
9 accounts to determine what he transferred to the DCMS Committee. This narrow relief addresses the
10 most pressing concerns associated with Six4Three’s violations of the Court’s orders and the ongoing
11 leaks of Facebook’s protected information. In the alternative, Facebook asks the Court to advance the
12 hearings on Six4Three’s lawyers’ motions to withdraw and on Facebook’s motion to open discovery to
13 no later than March 1, 2019 so that these roadblocks can be removed and proceedings to address the
14 improper disclosure of confidential information can move forward immediately.

15 These are exigent circumstances. Facebook produced its internal documents as a good-faith
16 participant in the litigation process, relying on the built-in assurance that the Court would enforce its
17 protective order and protect Facebook’s confidential information from misuse. Six4Three and third
18 parties with whom it is working in concert continue to trample on those orders, and protected and sealed
19 materials continue to be leaked to the press and the public with every passing day. Yet Six4Three and its
20 legal team have effectively stymied Facebook and the Court from investigating or redressing the
21 violations of multiple court orders. Facebook requests that the Court immediately exercise its authority
22 to safeguard Facebook’s protected materials. Otherwise—and entirely without exaggeration—this Court
23 is telling litigants that they may defy this Court’s orders, widely leak competitively sensitive information
24 (including trade secrets) produced in litigation to be published broadly by international media, and then
25 unilaterally preclude any corrective action (or even investigation) by the Court for months and months
26
27
28

1 simply by firing their lawyers.¹ That cannot be the way that litigation in this Court works.

2 **II. FACTUAL BACKGROUND**

3 **A. Six4Three Violates the Court's Orders by Disclosing Facebook's Confidential and Highly Confidential Information to the DCMS Committee.**

4 The events that led to this application are familiar to the Court. After Six4Three filed an
5 amended complaint naming Facebook and certain employees as defendants, the defendants in May 2018
6 moved to strike Six4Three's complaint pursuant to California's Anti-SLAPP law. *See generally* Ind.
7 Defs.' Mot. to Strike & for Attorney's Fees (May 3, 2018). In response, Six4Three filed a declaration
8 lodging thousands of pages of Facebook's confidential and highly confidential information that
9 Six4Three had obtained in discovery. *See* Godkin Decl. Opp'n Mot. Strike (May 17, 2018). Facebook
10 moved to seal or strike almost all of that material, which was irrelevant to the Anti-SLAPP motions.

11 Unbeknownst to Facebook at the time, Six4Three and its legal team were coordinating a far-
12 reaching effort to bring the Facebook documents that Six4Three lodged into the public domain. E-mails
13 show that Six4Three's legal team—comprising David Godkin, James Kruzer, Stuart Gross, and Thomas
14 Scaramellino, a Six4Three investor who volunteered to serve as Mr. Godkin's "law clerk"—strong-
15 armed newspapers and nonprofits around the world to pressure the Court to publicize Facebook's
16 documents. *See, e.g.,* Miller Decl. Mot. Open Disco. & Compel ("Miller Decl."), Ex. 7 ("[Mr.
17 Scaramellino to Politico:] [W]ill Politico be joining the Guardian's [amicus] filing on this? We've
18 made clear that we will only be working with organizations who support making this evidence public[.]")
19 & Ex. 18. Ultimately, five media organizations and two nonprofits joined Six4Three's request to unseal
20 the Facebook documents that Six4Three had lodged. Throughout the summer and early fall of 2018,
21 Facebook's sealing motion was postponed.

22 In the meantime, Six4Three and its CEO hatched a new plan to leak the documents at the heart of
23 the sealing proceedings. On October 1, 2018, Six4Three CEO Ted Kramer wrote to Damian Collins, a
24 member of the United Kingdom's House of Commons and the chair of a Parliamentary committee
25 investigating Facebook. *See* Miller Decl. Ex. 49 at SIX4THREE000015967. Mr. Kramer said that he

27 ¹ Mr. Kramer and Mr. Scaramellino are represented. It is only the LLC—of which Mr. Kramer is the
28 principal—that is seeking new counsel.

1 had “obtained extensive discovery of communications between Zuckerberg and numerous other
2 Facebook executives” and attached a redacted copy of the declaration at the heart of the sealing
3 proceedings, along with a list of Bates numbers corresponding to documents that Facebook had produced
4 in the litigation that Mr. Kramer suggested Mr. Collins might want to request.

5 Facebook’s sealing motion came up for hearing on October 11, 2018. The Court applied
6 California’s sealing rules and specifically called out Six4Three’s tactic of “inundating the trial court with
7 [a] deluge of confidential materials[.]” *See* Hr’g Tr. at 11:6-12 (Oct. 11, 2018). Relying on the First
8 District Court of Appeal’s decision in *Overstock.com, Inc. v. Goldman Sachs Group, Inc.*, 231 Cal. App.
9 4th 471 (2014), the Court found that Six4Three had “submit[ted] a tsunami of discovery materials subject
10 to a protective order.” *Id.* at 11:18-19. That abuse justified the Court in striking many of Six4Three’s
11 exhibits from the record. *Id.* at 12:4-9. The Court sealed most of the remaining exhibits in an order
12 issued November 1, 2018. *See* Order on Sealing Motions (Nov. 1, 2018).

13 Two days after the Court’s order issued, Damian Collins wrote back to Mr. Kramer. Mr. Collins
14 said he “would really like to do anything I can to help” and shared with Mr. Kramer a draft of a request
15 for the exhibits sealed by the Court two days earlier. Mr. Kramer responded the next day and invited Mr.
16 Collins to serve Mr. Kramer with a subpoena for the documents: “[Y]ou may be seeking to subpoena the
17 documents. I will agree to accept service of a subpoena mailed to my home address: 1267 Chestnut St.,
18 Apt 6, San Francisco, California 94109. Upon receipt of any subpoena, I would be required to notify
19 Facebook. If Facebook wishes to prevent my compliance, it will need to take action in appropriate fora.”
20 *See* Miller Decl. Ex. 49 at SIX4THREE000015965. Two days later, Mr. Collins’s committee sent Mr.
21 Kramer a formal request: The committee sought the documents that the Court sealed and noted that
22 “Committee proceedings are subject to parliamentary privilege in the United Kingdom . . . , but this
23 legislation does not have extraterritorial effect[.]” *See id.* at SIX4THREE000015970.

24 Two weeks later, on the eve of the Thanksgiving holiday, Mr. Kramer traveled to London for
25 unspecified “business meetings.” He checked into a hotel approximately 1500 feet from Mr. Collins’s
26 offices. According to a sworn declaration that Mr. Kramer later filed, he received a series of orders from
27 Mr. Collins’s committee shortly after arriving in London. On November 21, 2018, Mr. Kramer
28 supposedly showed up to Parliament without seeking legal advice and without an appointment, and

1 “asked Parliamentary staff to contact Mr. Collins to advise him I was outside and prepared to discuss his
2 investigation into me.” Kramer Decl. Supp. Pl.’s Br. Resp. Nov. 20, 2018 Order ¶ 16 (Nov. 26, 2018).
3 He took with him his laptop—which stored Facebook highly confidential information Mr. Kramer was
4 not entitled to have in the first place—and a thumb drive for copying the documents. Mr. Kramer
5 transferred a number of files to Mr. Collins. *Id.* ¶ 18. Mr. Kramer’s declaration said that he did not
6 “recall the exact files I transferred, but I was looking for any files I could access relevant to the anti-
7 SLAPP opposition papers, since that was the subject of the DCMS Orders.” *Id.*

8 Two weeks later, on December 5, 2018, Damian Collins published 250 pages of documents
9 obtained from Mr. Kramer. Each document corresponded to an exhibit from the declaration that
10 Six4Three filed in opposition to the May 2018 Anti-SLAPP Motion. Each document bore a
11 “Confidential” or “Highly Confidential” mark. And each document had been stricken or sealed by the
12 Court’s November 1, 2018 order. Global media—including *The New York Times*, *The Washington Post*,
13 Reuters, and *The Wall Street Journal*—published front-page stories about the leak.

14 **B. The Court Orders Limited Discovery, But Then Vacates the Order After**
15 **Six4Three’s Counsel Move to Withdraw.**

16 By early December 2018, proceedings in this Court to understand the scope and circumstances of
17 Six4Three’s violations were well underway. On November 30, 2018, the Court granted Facebook’s
18 requests to shorten notices of deposition and ordered Six4Three and its lawyers to preserve various
19 repositories of information relevant to Mr. Kramer’s disclosure. *See* Order from Nov. 30 Hr’g (Nov. 30,
20 2018). In particular, the Court ordered Mr. Kramer to make his laptop, physical devices, and cloud
21 storage accounts available to a forensic examiner, who would take a forensic image of those repositories.
22 *Id.* at 2, 3-4. The forensic examiner—Stroz Friedberg—completed those images by December 17.

23 But at that point, in mid-December, investigation into Six4Three’s violations ground virtually to a
24 halt. On December 17, the Court vacated its prior orders reopening discovery for the limited purpose of
25 investigating the DCMS Committee disclosures. *See* Minute Order (Dec. 17, 2018). The Court ordered
26 that the forensic examiner preserve the data it had collected, but blocked any discovery into the contents
27 of that data. The only discovery that was permitted was a stipulated order that Six4Three’s lawyers were
28 to produce by January 7, 2019 nonprivileged communications with media and governmental entities
related to Facebook. *Id.* When Facebook received those communications—which spanned some **9,500**

1 *pages*—it promptly moved to open discovery and to compel. The third-party communications
2 demonstrated that Six4Three’s legal team orchestrated a months-long, international effort to defy the
3 Court’s orders and publish Facebook’s Confidential and Highly Confidential information. *See* Def.’s
4 Mem. P. & A. Supp. Mot. Open Disco. & Compel at 4-8 (Jan. 8, 2019). In particular, Six4Three and its
5 legal team discussed designating third parties as “experts,” intending that those “experts” would then act
6 as anonymous sources for reporters, confirming the content of Facebook’s Confidential and Highly
7 Confidential documents, in direct violation of the stipulated protective order they were required to sign in
8 order to access the documents in the first place. *See* Miller Decl. Ex. 18.

9 One such “expert”—Paul-Olivier Dehaye—was retained for the specific purpose of using him as
10 an anonymous source to validate Facebook’s confidential information that Six4Three could not otherwise
11 share with the media. Six4Three first became aware of this “expert” through an introduction by a
12 reporter for *The Guardian*—Carole Cadwalladr—that had worked with him on Facebook issues in the
13 past (and the same reporter that later connected Mr. Kramer with the DCMS Committee). *See* Miller
14 Decl. Ex. 17, BG007208. Although we seem not to have all the communications between Six4Three’s
15 legal team and this supposed expert, the emails we do have confirm that Six4Three disclosed Facebook’s
16 confidential and highly confidential information to him. And with that information in his hands, Mr.
17 Scaramellino and Ms. Cadwalladr—with Six4Three’s counsel copied on the email thread—specifically
18 discussed using him as an anonymous source for an article that Ms. Cadwalladr was working on. Miller
19 Decl. Ex. 18, BG006394.

20 There is no question that this was all done knowingly and intentionally. Mr. Scaramellino even
21 discussed the need to keep the “expert” under wraps from Facebook and the Court so as not to derail their
22 parallel efforts to get the documents unsealed. Miller Decl. Ex.19, BG006403.² Mr. Scaramellino
23 similarly included this “expert” on correspondence to several other news entities, presumably so he could
24 serve as a “source” for them as well. *See, e.g.,* Miller Decl. Exs. 6, 20-22, BG001308 (AP), BG002164
25 (CNN), BG002165 (OMI), BG000149 (Politico).

26 Despite the thousands of pages produced by Six4Three’s lawyers, Facebook realized that the

27
28 ² Emphasis added throughout unless otherwise noted.

1 productions were incomplete. *See generally* Declaration of Zachary G. F. Abrahamson submitted
2 herewith (“Abrahamson Decl.”) Exs. 1 - 3. So Facebook sent several letters identifying problems in the
3 document productions by Six4Three’s law firms—Birnbaum & Godkin and Gross & Klein. *Id.* In mid-
4 February, Six4Three’s lawyers at Gross & Klein confirmed that they had not produced all documents
5 responsive to the Court’s order. *See* Abrahamson Decl. Ex. 3, Sullivan letter to Mehta (Feb. 13, 2019). A
6 **900-page** supplement followed, revealing that Six4Three’s scheme to abuse the expert designation
7 process went further than previously known. In particular, Gross & Klein produced a new e-mail sent by
8 Paul-Olivier Dehaye, Six4Three’s supposed “expert” willing to confirm details of Facebook’s
9 confidential information to reporters “anonymously.” *See* Abrahamson Decl. Ex. 4, GKLLP000200. In
10 that e-mail, sent *mere days* after Six4Three explained the expert scheme to Ms. Cadwalladr, Mr. Dehaye
11 told the nonprofit Open Markets Institute (“OMI”) that he was “ready to join [a conference call] at that
12 time if need be.” *See id.*³ In other words, Six4Three’s “experts” were not only willing to talk with
13 reporters from *The Guardian*, but also to collaborate with other media and non-profit entities.

14 While Facebook worked to learn these facts, Six4Three’s lawyers worked to put the case on ice.
15 In a series of filings beginning with the law firms’ motions to withdraw as counsel, Birnbaum & Godkin
16 and Gross & Klein asked the Court to postpone all motions and hearings in this matter until Six4Three
17 retained replacement counsel *and* that counsel got up to speed. *See, e.g.,* Pl.’s *Ex Parte* Appl. Continue
18 Hr’g at 4 (Jan. 17, 2019) ; Kramer Decl. re: Pl.’s Conditional Acceptance ¶ 16 (Jan. 24, 2019). The
19 motions to withdraw are set for March 13, 2019. *See* Order on Birnbaum & Godkin’s *Ex Parte* Appl.
20 (Feb. 8, 2019).

21 **C. Events of the Last Week Show the Urgency of Investigating And Addressing**
22 **Six4Three’s Breaches Now.**

23 While this Court’s investigation waits months for Messrs. Kramer and Scaramellino (who are
24 already represented) to line up lawyers for Six4Three LLC, the rest of the world is not waiting on the
25 investigation of this Court. On February 19, 2019, the DCMS Committee released *another* batch of
26 Facebook confidential information illegally obtained from Six4Three. *See generally*

27 ³ Four days after *that* call, OMI filed an amicus brief urging the Court to release Facebook’s confidential
28 information into the public domain. *See generally* OMI Amicus Br. (June 5, 2018).

1 <https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Further-selected->
2 [documents-ordered-from-Six4Three-Feb19.pdf](https://www.parliament.uk/documents/commons-committees/culture-media-and-sport/Further-selected-). All of these documents were stricken or sealed by the
3 Court’s November 1, 2018 order on the sealing motions.

4 That same day, Six4Three posted a misleading and libelous fundraising plea to Medium, an
5 online publishing platform. The plea, which linked visitors to a fundraising page at GoFundMe.com,
6 falsely accused Facebook of intentionally violating user privacy and engaging in “mafia-like tactics.”
7 *See How Facebook Sold Your Data and Fooled Government Regulators (Until Now)*, *available at*
8 <https://medium.com/@six4three/how-facebook-sold-your-data-and-fooled-government-regulators-until->
9 [now-b8b3d41fb565](https://medium.com/@six4three/how-facebook-sold-your-data-and-fooled-government-regulators-until-). As with Six4Three’s other attempts to garner media attention, the plea seeks to
10 cloak a borderline-hysterical false narrative with credibility by claiming that Six4Three’s story is
11 somehow grounded in the confidential and highly confidential information Six4Three received in
12 discovery. To do so, Six4Three’s post discussed the very same confidential and highly confidential
13 documents that Six4Three leaked to the DCMS Committee—information that is still subject to the
14 protective order and cannot be disclosed or discussed by Six4Three, its principle, or its legal team. *See*
15 *Stipulated Protective Order* ¶ 3 (“However, the protections conferred by this Stipulated Protective Order
16 do not cover the following information: (a) any information that is in the public domain at the time of
17 the disclosure to a receiving party or becomes part of the public domain after its disclosure to a receiving
18 party ***as a result of publication not involving a violation of this Stipulated Protective Order***[.]”).

19 Then, on the afternoon of Friday, February 22, 2019, Facebook learned that yet *more* documents
20 had leaked in violation of this Court’s orders. This latest set spans 66 pages of David Godkin’s
21 declaration in support of Six4Three’s opposition to the individual defendants’ anti-SLAPP motion and
22 Exhibits 172-180, which were attached thereto.⁴ The documents appeared on the public Github page of a
23 British technologist named Matthew Fowler, and immediately set off a fresh round of international
24 media. *See, e.g.*, [https://www.theguardian.com/technology/2019/feb/22/facebook-new-emails-leaked-](https://www.theguardian.com/technology/2019/feb/22/facebook-new-emails-leaked-six4three-lawsuit-user-data)
25 [six4three-lawsuit-user-data](https://www.theguardian.com/technology/2019/feb/22/facebook-new-emails-leaked-six4three-lawsuit-user-data). Matthew Fowler administers the website of his husband, Duncan Campbell,
26 an investigative journalist in the United Kingdom. *See* <http://www.duncancampbell.org/content/contact>.

27 _____
28 ⁴ All of these exhibits, too, were stricken or sealed by the Court’s November 1, 2018 sealing order.

1 Duncan Campbell has tweeted extensively about the Github disclosure and specifically mentioned both
2 Carole Cadwalladr (the *Guardian* reporter that has been in contact with Ted Kramer since May 2018 and
3 introduced Mr. Kramer to Damian Collins on the DCMS Committee), and Paul-Olivier Dehaye (a
4 frequent collaborator with Ms. Cadwalladr and a so-called “expert” retained by Birnbaum & Godkin to
5 whom Six4Three appears to have shared Facebook’s confidential information). *See* Abrahamson Decl.
6 Ex. 5, Screenshot of Campbell’s tweet. These overlapping connections raise fresh concerns about what
7 other third parties were provided with Facebook’s confidential information—whether directly by
8 Six4Three as part of its “expert” scheme or by those “experts” to reporters or the public at large.

9 Finally, just hours ago on February 24, 2019, yet *more* confidential documents from Mr.
10 Godkin’s declaration leaked on the Github site above.

11 **III. ARGUMENT**

12 Six4Three’s latest violation of the Protective Order, the new DCMS Committee document
13 releases, the Github leak, and the limited production from Six4Three’s counsel (including the recent
14 supplemental production from Gross & Klein) all show the ongoing urgency of getting Facebook’s
15 confidential information out of the hands of anyone except Facebook and the forensic examiner and
16 getting to the bottom of what documents have been leaked by Six4Three.

17 **A. Six4Three’s “Experts” and “Consultants” Should Immediately Return or Destroy 18 Facebook’s Confidential and Highly Confidential Information**

18 Even as Facebook’s confidential and highly confidential information continues to be leaked by
19 sources far and wide, Facebook—and the Court—still have no idea to whom Six4Three or its legal team
20 disclosed protected and sealed materials. The limited documents produced show that Birnbaum &
21 Godkin disclosed Facebook’s confidential and highly confidential information to at least certain
22 purported “experts” and “consultants,” a fact confirmed by Birnbaum & Godkin’s lawyers. That
23 disclosure—and e-mails proving that Six4Three intended for its experts to anonymously leak Facebook’s
24 confidential information—provide good cause under the protective order to identify Six4Three’s so-
25 called experts, and for Six4Three’s legal team to provide declarations to the Court explaining the
26 purported expertise that these individuals were expected to contribute on the parties’ legal disputes to
27 assess whether these “experts” were engaged in good faith. At the very least, Facebook requests that the
28 Court require Six4Three and its counsel to immediately identify *in camera* any “experts” or

1 “consultants” (or other third parties) to whom Six4Three disclosed Facebook’s confidential or highly
2 confidential information, and to certify to the Court in writing that every such individual has destroyed
3 all Facebook confidential information (including Facebook’s documents and summaries or work product
4 that includes confidential information) received from Six4Three or its legal team.

5 **1. The Court Has Power to Enforce Its Protective Order by Requiring**
6 **Identification of Experts and Certification of Destruction.**

7 The parties agreed to a protective order that allows disclosure of expert witnesses upon good
8 cause shown: any expert provided with confidential information must sign a certification “which shall be
9 . . . made available for inspection by opposing counsel *during the pendency . . . of the action only upon*
10 *good cause shown* and upon order of the Court.” See Stipulated Protective Order at ¶ 4(d). The present
11 circumstances show compelling reasons to require the identification of experts that were provided
12 confidential information, well beyond the “good cause” that might be ordinarily be required. Here, there
13 is uncontroverted evidence that Six4Three abused the expert designation process to leak Facebook’s
14 Confidential and Highly Confidential information. See pp. 6–7, *supra*. Those leaks have not stopped
15 since the Court ordered Mr. Kramer and Mr. Scaramellino to destroy confidential information they
16 possessed. Only production of Six4Three’s expert certifications can help the parties and the Court know
17 the source of Friday’s leaks on Github. See pp. 8–9, *supra*.

18 Even absent the controlling language of the protective order, however, the Court could order the
19 relief that Facebook seeks. Section 128 of the California Code of Civil Procedure provides the state’s
20 courts with broad authority to ensure that their orders are followed. See Civ. Proc. Code § 128(a). In
21 particular, the provision grants the Court “the power to do all of the following: . . . (4) To compel
22 obedience to its . . . orders[.]” *Id.* Section 187 complements section 128 by providing that, “[w]hen
23 jurisdiction is . . . conferred on a Court . . . , *all the means necessary to carry it into effect are also*
24 *given*[.]” Civ. Proc. Code § 187 (emphases added).

25 California courts routinely rely on these powers to craft injunctive or other relief for violations
26 associated with the disclosure of confidential information. For example, in *Cates v. California Gambling*
27 *Control Commission*, 154 Cal. App. 4th 1302, 1314 (2007), the plaintiff misappropriated confidential
28 documents from her former employer. The trial court “used its inherent power to order return of the
documents,” and the appeals court upheld the order under section 128. See *id.* In *Conn v. Superior*

1 Court, 196 Cal. App. 3d 774, 777 (1987), an employee took confidential information with him after he
2 was terminated. In subsequent litigation, the trial court found that the employee and his lawyer had
3 “improperly refused to return privileged and otherwise improperly acquired documents[.]” *Id.* at 781.
4 The trial court ordered the documents returned, and the appeals court affirmed: “[T]he court has the
5 inherent power to control the proceedings before it and to make orders which prevent the frustration,
6 abuse, or disregard of the court's processes. . . . ***The court’s order that petitioners return the ‘fruits’ of***
7 ***the misappropriated documents was within that power.***” *Id.* at 785; *see also Peat, Marwick, Mitchell &*
8 *Co. v. Superior Court*, 200 Cal. App. 3d 272, 287-88 (1988) (considering “whether a California trial
9 court has the inherent power to preclude evidence to cure abuses or overreaching involving confidential
10 information” and concluding that “trial courts do indeed have such inherent power”).

11 In addition, the Court has authority to issue a further protective order for good cause. *See* Civ.
12 Proc. Code. § 2031.060(b) (“The court, for good cause shown, may make any order that justice requires
13 to protect any party or other person from unwarranted annoyance, embarrassment, or oppression, or
14 undue burden and expense.”). That power “is not limited to” the orders enumerated in section 2031.060,
15 *see id.*, and protective orders requiring the return of confidential information are commonplace in
16 California civil litigation. *See Koehler v. Superior Court*, 181 Cal. App. 4th 1153, 1157 (2010) (“[T]hird
17 parties filed for a protective order requiring, inter alia, the return” of “documents containing
18 certain confidential information belonging to [the third parties]” and “obtained an order to that effect,
19 ordering return of the documents[.]”).

20 **2. Good Cause Exists to Require Six4Three to Disclose Expert Certifications**
21 **Under the Protective Order or, in the Alternative, to Identify *In Camera* the**
22 **Identities of Experts Who Received Facebook’s Confidential Information,**
and to Certify the Destruction of that Information.

23 Facebook first raised the expert issue a month ago, when it received documents from Birnbaum &
24 Godkin. *See* Def.’s Mem. P. & A. Supp. Mots. Open Disco. & Compel at 4. Those documents showed
25 that Six4Three had developed a plan to give confidential information to friendly third parties by
26 designating them as so-called experts and then encouraging them to provide anonymous sourcing to
27 reporters writing about Six4Three’s case. *See* Miller Decl. Ex. 19, BG006403. The recent, belated
28 production from Gross & Klein shows that Six4Three actually ***consummated*** this scheme: on June 1,

1 2018, one of Six4Three’s “experts” joined a phone call between Six4Three’s legal team and Open
2 Markets Institute (“OMI”). *See* Abrahamson Decl. Ex. 4, GKLLP000200. Four days later, OMI would
3 file an amicus brief in the sealing proceedings on Six4Three’s behalf.

4 These revelations require the immediate intervention of the Court. Already, Facebook has
5 requested that Six4Three stipulate to the relief requested herein: Facebook in January asked Six4Three’s
6 lawyers to identify any expert or consultant with whom Six4Three shared discovery material. *See*
7 Abrahamson Decl. Ex. 1, Mehta letter to Leveroni (Jan. 9, 2019). Six4Three’s lawyers rebuffed that
8 request, asserting that the work-product doctrine allows them to withhold the identities of Six4Three’s
9 so-called experts and consultants. *Id.* Ex. 6, Mehta letter to Murphy (Jan. 28, 2019). In an effort to avoid
10 that concern (as meritless as it is in these extraordinary circumstances), Facebook asked that Six4Three’s
11 lawyers identify *in camera* any experts to whom Six4Three disclosed Facebook’s information and certify
12 to the Court that each such person had destroyed or returned any Facebook confidential information in
13 their possession. *See id.* Birnbaum & Godkin’s lawyers would not even respond.

14 Although Facebook (and presumably the Court) could have never envisioned the staggering
15 disregard for the protective order displayed by Six4Three and its legal team, these are precisely the
16 circumstances that Paragraph 4(d) was designed to address—and the Court should enforce that provision.
17 At the very least—and expressly reserving Facebook’s rights to fulsome discovery at a later date—the
18 Court should order *in camera* identification of any so-called experts or consultants to whom Six4Three
19 produced Facebook confidential. *In camera* review balances Facebook’s interests in the confidentiality
20 of its internal communications while more than addressing Six4Three’s purported interests in its
21 assertions of privilege. Most importantly, certifying the destruction of Facebook information held by
22 third parties curbs the risk that more Facebook materials will leak into the public domain. As Facebook
23 showed in the sealing proceedings—and as the Court’s November 1, 2018 sealing order reflects—
24 disclosure of Facebook’s Confidential and Highly Confidential information would cause the company
25 and third parties irreparable harm. *See generally* Naugle Decl. Opp’n Media Entities’ Mots. to Unseal
26 (June 19, 2018); Sealing Order at 12-13 (Nov. 1, 2018).

27 **B. The Court Should Order Stroz Friedberg to Determine Which Files Six4Three**
28 **Provided to the DCMS Committee.**

Beyond the public leaks apparently connected to Six4Three’s “experts” and “consultants,” there

1 still remains the illegal disclosure to the DCMS Committee. The most pressing issue there is also the
2 lowest-hanging fruit: what files did Ted Kramer give to the DCMS Committee? Facebook demanded
3 this information from Six4Three within days of Mr. Kramer’s disclosure to DCMS, but Mr. Kramer
4 claims to have forgotten. *See* Abrahamson Decl. Ex. 7, Miller e-mail to Godkin (Nov. 26, 2018).
5 Specifically to preserve this information, the Court on November 27, 2018 ordered Six4Three, its
6 lawyers, and Mr. Kramer not to “delete or destroy any files . . . related to this litigation or the Order
7 [issued November 20, 2018].” *See* Order Concerning Sealing & Protective Orders at 2-3 (Nov. 27,
8 2018). The Court then ordered a third-party forensic examiner, Stroz Friedberg, to “take all measures to
9 restrict access to, and preserve the data on the laptop, all physical storage devices, and cloud storage,
10 including but not limited to imaging, for preservation of the evidence[.]” Order Den. *Ex Parte* Appl. at 3
11 (Nov. 30, 2018). That work has been done; the data is waiting for the parties and the Court.

12 The forensic examiner can attempt to learn what Mr. Kramer improperly disclosed to the DCMS
13 Committee with a focused forensic analysis. The forensic examiner should be permitted to access the
14 records from Mr. Kramer’s laptop to determine what files were transferred to the DCMS Committee.
15 The forensic examiner would not need to access the **content** of any files on the laptop to make this
16 determination, but rather the **logs and records** about files on the laptop and any transfers of those files.

17 **C. The Requested Relief Cannot and Need Not Wait On the Motions to Withdraw.**

18 There can be no argument that *in camera* identification must wait for Six4Three’s replacement
19 counsel to appear—Birnbaum & Godkin’s lawyers have already asserted the relevant privilege (work
20 product) on Six4Three’s behalf, and the *in camera* procedure requested herein is specifically crafted to
21 address that assertion. The information that would be disclosed in camera is known to **current counsel**,
22 and is the result of **current counsel**’s retention of supposed experts and consultants and **current**
23 **counsel**’s decision to put confidential information in their hands. Likewise, there can be no genuine
24 dispute that the documents that Mr. Kramer transferred to the DCMS Committee (and the forensic data
25 and computer logs relating to those file transfers) cannot, by definition, be privileged. In other words, the
26 relief requested herein does not implicate any issue that requires Six4Three to have new counsel.

27 Equally importantly, **current counsel** continues to represent Six4Three. Since December, the
28 parties have been paralyzed by Six4Three’s lawyers’ claims that they have a conflict that stops them

1 from taking any action on Six4Three's behalf. But whether or not that alleged conflict in fact requires
2 withdrawal, Six4Three's lawyers have never explained why their say-so is enough to freeze the case for
3 months while Facebook endures leak after leak due to Six4Three's misconduct. Put simply, Six4Three's
4 lawyers are Six4Three's lawyers until this Court says they are not. Rule 1.16 of California's Rules of
5 Professional Conduct governs the termination of representation and provides in subpart (c) that, "[i]f
6 permission for termination of a representation is required by the rules of a tribunal, **a lawyer shall not**
7 **terminate a representation before that tribunal without its permission.**" Cal. R. Prof'l Conduct, rule
8 1.16(c). Pursuant to the code provision under which Six4Three seeks to withdraw, this Court's
9 permission *is* required before withdrawal. *See* Mem. P. & A. Supp. Birnbaum & Goodkin's Mot. to be
10 Relieved as Counsel at 1 (Jan. 8, 2019) (citing Civ. Proc. Code § 284(2), which reads, "The attorney in
11 an action . . . may be changed 2. **Upon the order of the court**, upon the application of either client
12 or attorney[.]"). There is no exception to this rule for circumstances involving allegedly "mandatory"
13 withdrawal. Indeed, the comments to Rule 1.16 *expressly contemplate* a situation in which a lawyer asks
14 to withdraw due to conflicts and the court declines: "If a tribunal denies a lawyer permission to
15 withdraw, the lawyer is obligated to comply with the tribunal's order. . . . **This duty applies even if the**
16 **lawyer sought permission to withdraw because of a conflict of interest.**" Cal. R. Prof'l Conduct, rule
17 1.16 cmt. [4] (citations omitted). Whether and when Six4Three's lawyers stop acting on behalf of
18 Six4Three is not up to the lawyers—it is up to the Court.

19 Six4Three's lawyers have never disputed these authorities. Birnbaum & Godkin and Gross &
20 Klein's motions to withdraw claimed only that the DCMS Committee events created a conflict requiring
21 withdrawal. *See* Mem. P. & A. Supp. Mot. to be Relieved as Counsel at 3; Mem. P. & A. Supp. Mot. of
22 Gross & Klein to be Relieved as Counsel at 1-2 (Jan. 8, 2019). But that is not the end of the analysis: the
23 Court can still keep Six4Three's lawyers in the case if withdrawal would cause undue delay. *See*
24 *Mandell v. Superior Court*, 67 Cal. App. 3d 1, 4 (1977). Similarly, the Court can deny withdrawal even
25 after an alleged communications breakdown. *See People v. Brown*, 203 Cal. App. 3d 1335, 1341 (1988).
26 Six4Three's counsel have cited no authority that would let them dictate when or how Facebook can
27 exercise its rights to protect its confidential information by simply refusing to represent their client.
28

1 **D. In the Alternative, the Court Should Advance the Hearings on the Motions to**
2 **Withdraw and the Motion to Open Discovery and to Compel.**

3 Facebook understands that Six4Three’s lawyers’ pending motions to withdraw make these issues
4 more complicated for the Court. But that complexity—which is entirely a product of Six4Three’s
5 misconduct—must be weighed against the concrete and continuing international injury inflicted on
6 Facebook by Six4Three’s lawless behavior. At minimum, the latest DCMS Committee disclosures,
7 Github leaks, and new protective order violation by Six4Three itself require that this Court advance the
8 March 13 and March 15 hearings on the motions to withdraw and to open discovery.

9 There is nothing stopping this Court from setting the motions to withdraw and the motion to open
10 discovery for hearing this week. Section 1005 of California’s Code of Civil Procedure expressly confers
11 on this Court the power to “prescribe a shorter time” for the filing of opposition and reply papers in
12 advance of a hearing. *See* Civ. Proc. Code § 1005(b). California Rule of Court 3.1300(b) lets the Court
13 do so on its own motion or on application supported by a declaration showing good cause. *See* Cal. R.
14 Ct., rule 3.1300. The facts above unequivocally set forth good cause to advance the hearings on
15 Facebook’s and Six4Three’s lawyers’ motions. *See* pp. 3–9, *supra*. The withdrawal motions, in
16 particular, have been fully briefed for weeks. *See generally* Gross & Klein’s Reply Supp. Mot. (Jan. 24,
17 2019). And Facebook is willing to waive reply on its motion to open discovery if that means a hearing
18 on the motion no later than Friday, March 1, 2019.

19 **IV. CONCLUSION**

20 Facebook requests that the Court (1) require Six4Three to produce its expert certifications
21 pursuant to Paragraph 4 of the protective order (or, in the alternative, to identify *in camera* any “experts”
22 or “consultants” (or other third parties) to whom Six4Three disclosed Facebook’s confidential or highly
23 confidential information) and certify to the Court that those third parties have destroyed any discovery
24 material received from Six4Three; and (2) permit the forensic examiner to conduct a limited analysis of
25 the data associated with Mr. Kramer’s devices and accounts to determine what he transferred to the
26 DCMS Committee. In the alternative, Facebook asks the Court to advance the hearings on Six4Three’s
27 lawyers’ motions to withdraw and on Facebook’s motion to open discovery to no later than March 1,
28 2019.

1
2 Dated: February 25, 2019

DURIE TANGRI LLP

3
4 By: _____



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PROOF OF SERVICE

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On February 25, 2019, I served the following documents in the manner described below:

DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR AN ORDER ENFORCING THE STIPULATED PROTECTIVE ORDER

☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from cortega@durietangri.com to the email addresses set forth below.

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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed on February 25, 2019, at San Francisco, California.

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5 Christina Ortega
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